STATE OF INDIANA)
) SS:
COUNTY OF DELAWARE)

IN THE DELAWARE COUNTY SUPERIOR COURT

CRAIG DUNN and PHILIP WILEY, et al.,
Plaintiffs,

-v-

RJR NABISCO HOLDINGS CORPORATIONS, et al.,
Defendants.

CAUSE NO.
18D01-9305-CT-06

VOLUME I

The deposition upon oral examination of JOSEPH MICHAEL SONGER, M.D., a witness produced and sworn before me, Thomas A. Richardson, RDR-CM, Notary Public in and for the County of Marion, State of Indiana, taken on behalf of the defendants at the offices of Medical Consultants, 2525 University Avenue, Muncie, Indiana 47303, on October 31, 1997, at 9:30 a.m. pursuant to the Indiana Rules of Trial Procedure.

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JOSEPH MICHAEL SONGER, M.D.,

having been first duly sworn to tell the truth, the whole truth, and nothing but the truth took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. WAGNER:

Q Would you state your full name, please.
A Joseph Michael Songer.
Q Dr. Songer, my name is Richard Wagner. I'm one of the attorneys for R.J. Reynolds Tobacco Company in the lawsuit in which your deposition is being taken today. Have you been deposed before, sir?
A In this case or --
Q Ever.
A Yes.
Q So you understand a little bit about what the process is all about?
A Yes, sir.
Q One of the things that I want you to keep in mind as we go through this is as I ask you a question and you give an answer, you have to answer audibly. Shakes of the head are not recorded by the reporter who is sitting here.

And if during the course of the examination at any time I ask you a question that you don't understand, will you tell me?

A Yes, sir.

Q And if you tell me that, I will try to rephrase the question so you and I both understand it, okay?

A Thank you.

Q Will you give us your full name, please.

A Joseph Michael Songer.

Q What is your date of birth?

A 6-24-43.

Q And what is your residential address?

A [DELETED]

Q And do you live there with your family?

A Yes, sir.

Q What does your family consist of?

A Wife, and in residence at this time a son.

MR. WAGNER: I will ask the reporter to mark this as Exhibit 1.

(Exhibit(s) 1 marked for identification.)

Q Doctor, I will show you what has been marked as Exhibit 1. Take a moment to please examine that, and I will ask you whether or

not you have seen it before.

A Yes, sir.

Q Do you recognize that as a Notice for your deposition today and a Notice which requests you to bring certain documents to the deposition?

A Yes, sir.

Q And did you read through the list of documents that are set out in Exhibit 1? Not now, but before.

A Yes, sir.

Q Have you brought to the deposition here today all of the documents that are included within the descriptions of those documents in paragraphs 1 through 18?

A I did not bring 14. I did not bring a curriculum vitae.

Q You didn't bring 14, which requested you to bring a current curriculum vita and bibliography. Do you have such a document?

A Yes, sir. I planned to get it this morning, and I didn't.

Q Is it possible that at some time this morning during a break you could get that for us?

A Yes, sir.
Q And I'm sorry. What was the other category of documents you say you did not bring?
A To my knowledge, that's the only thing.
Q That's the only thing?
A Yes.
Q You have in front of you here today then, Doctor, in the deposition room all of the documents that you have found that are responsive to the request for documents; is that correct?
A Yes, sir.
Q And certain of those documents you have already made photocopies of for us, haven't you?
A Yes, sir.
Q Certain of those documents you have not made photocopies of; is that correct?
A That is correct.
Q What I want to do now, Doctor, if I can get from you those documents that you have in front of you that you have brought that are responsive to the deposition request, I want to make some of these exhibits. Then I want to dictate into the record a description of

some of the documents we're not going to make exhibits. You can follow along with me to do that.

MR. YOUNG: I want to note for the record the doctor had been advised about Dr. Turner's deposition. In fact, he was in there that day and knew of the exhibits that the reporter had, which contain the joint chart of Medical Consultants between Dr. Turner and Dr. Songer and the hospital chart. He didn't actually physically bring those with him. But they are here as part of this deposition in fulfillment of the Notice of Deposition as well.

MR. WAGNER: Okay. What you are representing to me is that within this box -- and we will identify it with more particularity -- that within this box we have here are documents that were identified during Dr. Turner's deposition that Dr. Songer would have brought to the deposition, but for the fact that they are already a part of the record in the Turner deposition?

MR. YOUNG: I think that's

accurate, as part of the agreement of all the counsel that we have the reporter make copies of those so we would have a master copy or file, so to speak, available for this deposition of Dr. Turner.

MR. WAGNER: I didn't mean to step on your statement, Jim. If I could, let's identify for the record what those documents are that were identified during the Turner deposition.

Doctor, I will ask you to look at these with us briefly as we go through them because I want to ask you whether or not you have read these and are familiar with them.

The first is Exhibit 1, which is the Notice to take Dr. Turner's deposition. And these are all the exhibit numbers that were identified during Dr. Turner's deposition: We have Exhibit 2; Exhibit 3, Exhibit 4; Exhibit 5; Exhibit 6; Exhibit 7; Exhibit 8; Exhibit 9; Exhibit 10; Exhibit 11, which is a brown envelope, the contents of which are medical records pertaining to the treatment of Mildred

Wiley at Ball Memorial Hospital; Exhibit 12; Exhibit 13; Exhibit 14; Exhibit 15; Exhibit 16; and finally Exhibit 17.

Have I said that correctly, Doctor?

THE WITNESS: Yes, sir.

MR. YOUNG: There is no need to make a duplicate of those. We can use those exhibits between the two depositions, wouldn't you agree?

MR. WAGNER: Yes. Although, we may have some duplication during the course of Dr. Songer's deposition.

MR. YOUNG: Sure.

BY MR. WAGNER:

Q Doctor, let me ask you, Exhibit 17 of Dr. Turner's deposition -- and you can take a moment to look at these if you would like -- consists of copies of various articles about cigarette, cigarette smoking and so forth. Are these articles that you have read?

A No, sir.

Q So those would not be documents that you would have brought to the deposition today responsive to the deposition request,

correct?

A Right.

MR. WAGNER: Now, Doctor, I want to go back to the documents that you brought today. You and I can both resume our seats. If I could have the documents that I put on top here for just a moment, let me have those if you don't mind.

Would you mark these, please, as the next series of exhibits.

(Exhibit(s) 2-18 marked for identification)

Q Dr. Songer, is it correct that what we have marked for identification as Exhibits 2 through 18 are documents that you have brought to the deposition today in response to the request for production of documents contained in the deposition notice, Exhibit 1?

A Yes, sir.

Q Then, sir, I want to go through your file with you and just identify for the record, without making them exhibits, the additional documents you brought here today responsive to the request for production, okay?

A Yes, sir.
Q One of those is to take your deposition, which we identified as Exhibit 1, correct?
A Correct.
Q And then there's an affidavit of authorization signed by Philip Wiley; is that correct?
A Yes, sir.
Q And then there's a certified copy of letters of administration issued in connection with the Mildred Wiley estate; is that correct?
A Correct.
Q And then we have the original and copies of other documents that we have marked for identification as exhibits, correct?
A That is correct.
Q Now, I have accurately described then all of the documents that you have brought to the deposition here today; is that correct?
A Yes, sir.
Q Let me ask you a few questions about these documents. I will show you Exhibit 2. Is this multi-page document in your handwriting?
A Yes, sir.

Q And can you describe for us what it is?
A It begins with my review of sections of medical oncology textbooks which I thought would be pertinent to today's discussion.
Q When did you make that document?
A In the process of the last two weeks.
Q Let me ask an easier question. When did you begin making that document?
A I would say two weeks ago.
Q Has it been an ongoing process where you continued to make notes in Exhibit 2?
A Yes, sir.
Q And in the left-hand column there appear to be notations which are a little cryptic to me. What are those?
A These are references to the texts so that it can be found where the references are within the medical oncology text that I reviewed.
Q Are the medical oncology texts that you are referring to that are set out in the left-hand column of Exhibit 2, are they these Exhibits 3, 4, and 5 that we have here today?
A And 6.
Q And 6, which is a NIOSH bulletin?

A Yes, sir.
Q And the abbreviation CO, what does that stand for?
A Clinical Oncology.
Q By the abbreviation CO that I am referring to, that's in the left-hand column here?
A Yes, sir.
Q So those would be your references; is that correct?
A Yes.
Q And cancer, that would be what?
A Cancer would be this text here.
Q That would be Exhibit 5?
A Correct.
Q DeVita?
A Correct.
Q And then NIOSH is self-explanatory. Is there another reference there?
A Cancer Medicine.
Q Cancer Medicine would be Exhibit 4 then; is that correct?
A Yes.
Q So we have covered all of the references that appear in the left-hand column?
A Yes, sir.

Q Did you engage in making Exhibit 2 at someone's request?
A No, sir.
Q Why did you go through the exercise of creating Exhibit 2?
A In reviewing the requirements of what I would bring with me, I understood that anything that I looked at that might impact my discussion should be made available. And I chose to look at three medical oncology texts that we have in our office that we refer to frequently as a reference.
Q Now, in what I will call the body or the right-hand portion of the pages of Exhibit 2, you have written certain things, right?
A Yes, sir.
Q And as a general matter, what do those pertain to?
A I have written information that would tell me in synopsis form what was written in the textbooks in those locations.
Q It's accurate to say, is it not, Doctor, that some of the writing that we're looking at here in Exhibit 2 relates to

environmental tobacco smoke and its association with lung cancer; is that correct?

A That is correct.

Q And had you looked at those materials before two weeks ago when you began creating Exhibit 2?

A Would you clarify what you mean by having looked at those materials?

Q Had you studied the texts from which you derived your handwritten notes in Exhibit 2 prior to the time you began creating Exhibit 2 for any relationship between environmental tobacco smoke and health and environmental smoke and cancer?

A Not to my recollection.

Q So this was a new exercise for you?

A Yes, sir.

Q I haven't had a chance to look at all these materials, Doctor. But as I understand it, if I want to find the source of something you have written on the right-hand side, I can find these in these exhibits that are before us here today by looking at the left-hand side?

A Yes, sir.
Q From what med school did you graduate and when?
A Indiana University School of Medicine, 1968.
Q Can you trace your professional history, if you will, since graduation from medical school for us.
A I stayed at Indiana University and did an internship in internal medicine, followed by two years residency in internal medicine, followed by two years fellowship in hematology.
Q Was the fellowship at Indiana University also?
A Yes, sir.
Q And was that in Indianapolis?
A Indianapolis the entire time.
Q So you would have completed your fellowship in hematology at I.U. what year?
A June of 1973.
Q What did you do next?
A I came to [DELETED] and joined Medical Consultants.
Q Was that in the year 1973?
A It was in July of 1973.

Q What is Medical Consultants?
A It is a group of internal medicine subspecialists that are joined by real estate holdings and share office space, employees, and deliver subspecialty internal medicine care to the vicinity and within Ball Memorial Hospital.
Q Is it a partnership?
A It is a real estate partnership.
Q And when you joined Medical Consultants in July of 1973, was Dr. Nicki Turner in that group?
A No, sir.
Q When did she become a member of Medical Consultants?
A I don't know. It would have been within the subsequent five to ten years.
Q So is it accurate for me to say that you and Dr. Turner are partners in this business enterprise?
A Yes, sir.
Q Have you taken any additional courses or had any formal training in any subjects related to the medical profession since July of 1973?

A No formal additional training.
Q Since graduating from medical school, have you engaged in any courses or had any training in the subject of toxicology?
A No, sir.
Q Same question with respect to epidemiology.
A No, sir.
Q Same question with respect to chemistry.
A No.
Q Same question with respect to pharmacology.
A No, sir.
Q Same question with respect to oncology.
A No, sir.
Q When you were in medical school, did you take courses in toxicology?
A Yes.
Q Did you take a course in epidemiology?
A I don't remember.
Q Are you Board certified, Doctor?
A I'm Board certified in internal medicine.
Q When did you become Board certified in internal medicine?
A 1972.
Q Have you taken any Boards that you have not passed?

A No, sir.
Q At what hospitals have you treated patients since 1973?
A Ball Memorial Hospital, Muncie, Indiana; Blackford County Hospital, Hartford City, Indiana; Henry County Memorial Hospital, New Castle, Indiana.
Q Are you currently treating patients at those hospitals?
A No, sir. At the present time, I am not seeing patients and treating them at any hospital other than Ball Memorial Hospital.
Q Is there any particular reason why that is so?
A The two other areas that we serve were a circuit-riding venture with the other medical oncologists in our group. The need to go to Blackford County ceased to exist. No one in our group goes there now. The medical oncology coverage at Henry County Memorial Hospital is being done by another associate.
Q Have you ever taught?
A No full-time teaching.
Q Do you do any part-time teaching?

A As a part of our affiliation with Ball Memorial Hospital, I believe since the inception of the medical school at the Muncie Center for Medical Education, we teach certain courses to the medical students, first-year students, strictly subject oriented once per year.

Q What do you specialize in, Doctor, in the field of medicine?

A I specialize in hematology and medical oncology, adult medicine.

Q Are those three separate things?

A No. Adult medicine meaning that I do not treat pediatric patients; hematology and medical oncology.

Q Is there a Board certification for medical oncology?

A Yes, sir.

Q But you are not Board certified in that area?

A That is correct.

Q And you have never taken the Boards for medical oncology?

A I have never taken the Boards for medical oncology.

Q And you are not Board certified in hematology either; is that correct?
A No, sir.
Q Aside from the medical group that you have told me about, are you involved in any other business activities?
A Yes, sir.
Q And what are those?
A I am a partner in an apartment building complex in Muncie. And I own property at Shamrock Lake, Indiana, which has been subdivided for lot sales.
Q Any other such business activities?
A None that come to mind.
Q And are you engaged in any of those business activities with any of the other doctors here in your medical group?
A No, sir.
Q Is Dr. Turner involved in any business activities with you?
A No, sir.
Q Are you a member of any civic associations?
A I'm a member of the Little Red Door, which is a cancer organization, Delaware County. I'm on the board of directors of the Muncie

Mission, Muncie, Indiana, which is a rescue mission. Those are the only ones that come to mind.

Q All right, sir. Do you have any civic appointments or elected positions of any kind?

A No, sir.

Q We're taking your deposition here today in a conference room which is on the same floor where your professional office is; is that correct?

A That is correct.

Q And what is the proximity of your office to Dr. Turner's office?

A It must be about four offices apart.

Q Right here on the same floor?

A On the same floor, four to six, somewhere in that range.

Q Can you describe for us what the arrangement is with respect to keeping records on patients that you and Dr. Turner would jointly treat?

A We share a common chart with all physicians who treat patients, see patients, consult with patients either at Ball Memorial

Hospital or at this office. All medical information would go into a chart designated by that patient's name.

Q So if you and Dr. Turner, for example, were treating a patient John Jones, you and Dr. Turner would both centrally have located here someplace in your offices the medical records for that patient; is that right?

A Yes, in the medical record area on this floor.

Q That was my next question. Is there a medical record area here?

A Yes, sir.

Q Can you describe that for us? Is it microfilm? Is it hard copy and kept in file drawers?

A At this point, it would appear similar to this folder (indicating).

Q You are holding up a file folder?

A A manila envelope with a patient's name. Open files are alphabetically listed. And when the patient is seen here, that chart comes to the station of the examining physician. And then it returns to that file.

Q When a patient is seen here -- by "here," you mean in your offices?
A Yes, sir.
Q What if a patient is seen at the hospital, Ball Memorial Hospital? Are duplicates of the Ball Memorial records forwarded to your offices?
A Within the limits of their understanding that we need to have records. By that, sometimes after you have seen a patient, you automatically will be sent records. Sometimes you are not.
Q And when does that happen and when does it not happen? Is there some reason for that?
A No, sir.
Q It's just a quirk of the record-keeping agency that's at Ball; is that right?
A Yes, sir.
Q Are records kept here in your offices someplace on microfilm or microfiche?
A After a certain length of time, records are microfilmed.
Q What is that length of time?
A I don't know.
Q Who is in charge of the record-keeping

department?

A Sylvia McVey.

Q McVey?

A Yes, sir.

Q You have to answer out loud.

A Sylvia McVey.

Q I know it's hard to remember. And how long has she been with your group?

A I'm not sure. I would estimate five years.

Q Doctor, is there a policy that your group has for the purging of medical records? That is to say, after a certain period of time, are records destroyed?

A To my knowledge, they are never destroyed. Once they go on microfilm, that microfilm is kept. I have gone back years far enough to believe we do not throw records away.

Q So is it accurate then for me to say that with respect to your treatment of Mildred Wiley, whatever records Dr. Turner had, you had or had access to?

A As far as the medical chart, that should be the case. That is the case.

Q And by "the medical chart," what do you mean specifically?

A The manila folder that is kept for a certain length of time in the open file area of the medical records department.

Q And would that file also contain correspondence that was written, say, by you or Dr. Turner to an attorney or to somebody outside?

A It should be kept in that file.

Q Same file?

A That same file.

Q And if Dr. Turner -- as you and I both know, she did dictate a progress note, as she called it, about her activities in this case. Would that same memorandum go in that file?

A I would presume that it would. It would be typical for anything that's dictated to automatically go from the stenography area to that chart.

Q So any time that you, as one of the doctors who treated Mildred Wiley, wanted to look at the medical records that pertain to Mildred Wiley, you would go to that file. And everything that we have described would be in there and you would have access to it?

A Yes, sir.
Q Are you personally acquainted with Mr. Cross?
A Yes, sir.
Q And how do you know him?
A I had occasion in the past to treat his mother.
Q When was that?
A I'm going to say in the range of one to two years.
Q And you got to know Mr. Gregory Cross as a result of that?
A I believe that was the first time I had met Mr. Gregory Cross.
Q And have you had occasion to meet with him or to be with him on occasion since then?
MR. YOUNG: Since when?
MR. WAGNER: Since the time you began treating his mother.
A Not until a week ago Wednesday to my recollection.
Q Are you and Mr. Cross social friends?
A No, sir.
Q Do you know any of the other plaintiffs' lawyers in this case? And there are several

of them as you may know, right?

A Yes, sir.

Q Do you know any of the others lawyers, Messrs. Young or Riley?

A I have met on occasion with two lawyers from Indianapolis in the firm of Young and associates.

Q And what are their names?

A I would have to be reminded.

Q Are they here in the room today?

A Yes, sir.

Q Can you point them out?

MR. OHLEMEYER: Mr. Young?

MR. YOUNG: I'm Jim.

A Jim and Joe. But I get them mixed up as to which is which.

MR. WAGNER: Off the record.

(Discussion off the record)

Q Had you met the lawyers that you just identified for us on any occasion prior to the time that you first became aware that they were involved in this case?

A No, sir.

Q Had you met Mildred Wiley prior to the time you began treating her?

A Not to my knowledge.
Q Were you acquainted with any member of Mildred Wiley's family prior to the time you began treating her?
A Not to my knowledge.
Q Have you ever been involved as a witness in a lawsuit besides this one?
A Yes, sir.
Q Can you tell us what those experiences have been.
A The cases were similar, two cases. And they both had to do with patients that I had treated that had metastatic malignancy to the brain. And both cases were related to whether the patient was competent at a certain point in time to change the will.
Q And did you render an opinion with respect to that subject in those cases?
A The first case I was not allowed to render an opinion. It turned out they had made a decision to split it 50-50. And neither side would ask me my opinion, risking 100-0. In the other case, I rendered such an opinion.
Q Have you been involved as a witness in any

other cases?

A Not to my recollection.

Q Were those two cases that you've identified for me cases that were pending here in Muncie?

A Both patients were treated at Ball Memorial Hospital. One went to court in Henry County, and one went to court in Madison County.

Q Did you give deposition testimony in those cases?

A Yes, sir.

Q Did you give testimony in court?

A Yes, sir.

Q In both cases?

A Yes, sir.

Q Do you have copies of those depositions? That was one of the things you were asked to bring today.

A No, sir.

Q You don't have copies?

A No, sir.

Q Do you recall the names of the attorneys who were involved?

A No, sir.

Q You don't remember any of them at all on either side?
A As I recall, they were out-of-town attorneys. I do not remember either.
Q When were you involved in those cases approximately? I realize this may have been a while ago.
A I would say the case in New Castle was 15 years ago. The case in Anderson was 10 years ago.
Q Have you ever been a party in a lawsuit, Doctor? By that, I mean either as a plaintiff or a defendant. Have you ever sued somebody or been sued?
A I have never sued anyone. I had a malpractice suit brought that never went to trial.
Q So that was a case where you were a defendant?
A I was the defendant.
Q And where was that case brought, what city?
A Muncie, Indiana.
Q And when did that occur?
A Between five and ten years ago.
Q Do you remember the names of any of the

attorneys involved in that case?

A No, sir.

Q Who was the plaintiff in that case?

A Tanya Catlin.

Q C-A-T-L-A-N?

A C-A-T-L-I-N.

Q Is she a [DELETED] resident?

A Yes, sir.

Q What was the disposition of that case?

A The malpractice panel voted 3-0 that it was not a legitimate complaint or never followed with any formal litigation beyond that.

Q Did you work with an Indianapolis attorney in that case by chance? I mean, defending you.

A I worked with someone from Ft. Wayne. And he was from Marion, I believe. I would recognize his name.

Q Any other lawsuits in which you were a plaintiff or a defendant?

A Not to my recollection. Would serving on a malpractice panel be part of your question? I was on a panel that reviewed a case.

Q No, it would not be. Have you ever been involved in a lawsuit, other than the two

will contests which I believe they were that you described for me? Have you ever been involved in a lawsuit, other than the two will cases and this case, as a consultant or expert witness of some kind?

A There was a case that I was asked to give a deposition for -- and I believe I was considered an expert witness -- that had to do with a ruptured spleen. And I never heard what the disposition of that case was.

Q Did you give testimony in that case?

A I gave testimony about my --

Q Opinions?

A -- opinion about the case.

Q And that was in a deposition that you gave that testimony?

A Yes, sir.

Q Did you testify in court?

A No, sir.

Q That would be a third case then where you testified, right?

A I gave a deposition, yes, sir.

Q Do you remember the names of the attorneys involved in that case?

A It would be -- the plaintiff's attorney was

out of town. I believe that Chip Clark was one of the lawyers in the case.

Q Did you work with Mr. Clark? I mean, did he solicit your participation as an expert witness?

A No, I believe it was the out-of-town attorneys that had solicited my deposition. And he was there to observe.

Q And you don't remember his name?

A No.

Q But you believe Chip Clark was on the other side then?

A I am sure that it was Chip Clark that was on the other side.

Q Did I ask you when that was? If so, I apologize for repeating it.

A Ten years.

Q Ten years ago?

A Yes.

Q Let me ask you if that kind of refreshes your recollection. Do any other cases come to mind in which you have been a witness?

A Not to my recollection.

Q Do you have any affiliation of any kind with the Wesleyan Church?

A No, sir.
Q To what professional organizations do you belong, Doctor?
A None.
Q American Medical Association?
A No.
Q None; is that right? You have to answer out loud.
A None.
Q Are you a member of any antismoking groups or organizations?
A Not to my knowledge.
Q Do you contribute in any way money, time, or services to any antismoking groups or organization?
A No, sir.
Q Have you written any articles that have been published?
A I believe there are some articles on which I had coauthorship. But I have written no primary articles for publication.
Q Would those be on your curriculum vita?
A I believe so.
Q We can save a little time if I can look at those later.

A They should be.
Q Would it be correct, Doctor, that any books or articles that you had written would be on your curriculum vita?
A I hope so. I'm not sure.
Q We will take a look at that after you get it for us. And then we will follow up on that, okay?
A Yes, sir.
Q Let me ask you this: Have you ever written anything that's been published? And I'm asking that in a very broad sense. I'm including letters to the editor or whatever that related to the subject of cigarette smoking.
A No, sir.
Q Have you ever given any talks or presentations of any kind on tobacco or smoking?
A Only in the context if I had been talking about lung cancer, for example. I've not given any lectures on tobacco smoking as a general topic.
Q In what context would you have given these talks you were talking about? Is this to a

patient? Let me withdraw the question.

I was really inquiring whether you have given any such presentations or talks to groups of people in a formal setting like you would, for example, in a seminar or public forum of some kind.

A We have occasion, for example, when we are teaching medical students, we have occasion to talk about various topics. I have never been assigned that topic.

On occasion, we will give lectures to what we call the house staff which has to do with physicians in training at Ball Memorial Hospital. I don't recall that I have ever given such a lecture.

As I say, it would have been in the context of perhaps talking about lung cancer generically. But I have never prepared a lecture, to my recollection, about tobacco smoking as a topic.

Q Do you regularly read any medical journals?

A I try to read medical journals.

Q Which ones do you regularly read? By "regularly," Doctor, I mean not maybe every day, but monthly or bimonthly and so forth.

A New England Journal of Medicine. And I attempt to read the ASCO Journal, the ASCO Journal, American College of Clinical Oncology -- American Society of Clinical Oncology. The blue journal we call it.

Q Any others?

A As far as regularly prescribed journals, those would be the two. We get literally inundated with various types of specific journals that come from various sources that come across our desk dealing with various topics that I attempt to read.

Q And would you describe your reading of those materials that you have just described for me as something you would review sporadically or as it happened to grab your interest?

A Sporadically, if something happens to be pertinent to a patient I'm dealing with or a topic I'm going to be discussing.

Q Are there any texts that you consider to be authoritative on the subject of cancer?

A I have brought three texts in abbreviated form, all of which I would consider authoritative in the field of cancer.

Q And those would be "Clinical Oncology," Exhibit 3?
A Yes, sir.
Q And that would be Exhibit 4, which is "Cancer Medicine," third edition, edited by James Holland, et al., Exhibit 4; is that correct?
A Yes, sir.
Q And it would be "CANCER Principles and Practice of Oncology," 5th Edition, by DeVita and others, Exhibit 5; is that correct?
A Yes, sir.
Q Any other than that?
A Those are the three that we happen to have here in our office. And so I would most often refer to one of the three of those.
Q Are you familiar with a work by Dal and Hammer, "Pulmonary Pathology"?
A No, sir.
Q Are you familiar with the work by Thurlbeck, T-H-U-R-L-B-E-C-K, and Churg, "Pathology of the Lung"?
A No, sir.
Q Are you familiar with the work by Alsner,

A-L-S-N-E-R, et al., "Comprehensive Textbook of Thoracic Oncology"?

A No, sir.

Q Are you familiar with the work by Saldona, S-A-L-D-O-N-A, "Pathology, a Pulmonary Disease"?

A No, sir.

Q Can you tell us, Doctor, what your understanding is of what this case is all about in which your deposition is being taken?

A I believe it is a case that has been brought as the causation of lung cancer by passive smoke inhalation in the workplace.

Q Do you have some understanding as to who the plaintiffs are?

A Yes, sir.

Q And who do you understand they are?

A Philip Wiley.

Q Who is the --

A The husband.

Q The surviving husband of Mildred Wiley?

A Yes, sir.

Q Do you know Mr. Craig Dunn who is also a plaintiff in this case?

A No, sir.
Q Who do you understand the defendants are in this case?
A I presume it's the tobacco industry in general.
Q Tell us what you understand your role is in this case.
A I understand my role in the case is to explain my contact with the patient, what decision-making I made to bear on the case, and what recommendations I made relative to the care of the patient.
Q In particular, what do you mean by your decision? Decision with respect to what?
A As to what was going on with the patient, what was causing the problems, and what we could do to try to help her.
Q Has anybody talked to you, Doctor, about your expressing any expert opinions in this case?
A I'm not aware of whether I am considered an expert witness or not.
Q Would it be correct to say then -- and you correct me if I am wrong -- that you don't know whether you are to be an expert and

give an expert opinion at the trial in this case or not? Is that a correct statement?

A That's correct.

Q Doctor, in addition to what you have told me up to this point with respect to your preparation of Exhibit 2 which, you know, contains your notes and the source information that you have described for me that you looked at in preparing Exhibit 2, what else have you done to prepare for your deposition today?

A I have in essence reviewed the records. I have read what I think is pertinent information from reference texts, bulletins from the CDC.

Q That's Exhibit 6, the "NIOSH Current Intelligence Bulletin Number 54"; is that correct?

A Yes, sir.

Q What else?

A I have spent some time with lawyers discussing what the nature of this interview today will consist of.

Q By "interview," you mean this deposition?

A This deposition.

Q What else have you done? Let me put this back in context. What else have you done to get ready for your deposition today or prepare for your deposition today?
A To my recollection, that's basically been the entire effort that I have put forth.
Q Now, the texts you told me you reviewed, those are the texts we have identified up to this point that you referenced in preparing Exhibit 2?
A Yes, sir.
Q And no other texts?
A No, sir.
Q And when you said you reviewed the medical records, what medical records did you review?
A The medical records of Mildred Wiley.
Q Doctor, just to sort of simplify, would those medical records be the records we identified earlier that are present here in the deposition room that were marked as exhibits during Dr. Turner's deposition?
A Yes, sir. I also reviewed a folder that I had kept some of the information that we added earlier today, had accumulated in that

folder.

Q Now I am confused. What are you referring to? Can you be more precise for me? You also reviewed what?

A I had reviewed this correspondence.

Q If I may for the record, you are indicating that you also reviewed all the documents that we have marked for exhibits during your deposition today, correct, that you brought to the deposition room?

A Yes, sir.

Q Anything else you reviewed that you can remember?

A Not to my recollection.

Q Now, you mentioned that you met with lawyers. What lawyers did you meet with?

A Jim and Joe Young, and most recently Mr. Cross and Mr. Howard.

Q That's Max Howard?

A Yes, sir.

Q Any other attorneys?

A No, sir.

Q Did you meet with Mr. Will Riley over there hiding in the background?

MR. RILEY: Not me.

A Not that I recall.
Q How many such meetings with attorneys did you have?
A I would say in the range of four to six over the last four years.
Q Some of those meetings, of course, would have been before you knew you were going to be deposed?
A Actually, I didn't know I was going to be deposed until a month ago. So the answer to that is yes.
Q Now, you had four to six meetings, to the best of your recollection, with these attorneys you have named for me; is that correct?
A Yes, sir.
Q The earliest one would have been approximately four year ago; is that correct?
A That is approximately correct.
Q And do you remember with whom you met on that occasion?
A For the most part, it was with, I believe, Jim Young, or with Jim Young and Joe Young.
Q Where did that meeting take place?

A In this office.
Q Whose office?
A In this office.
Q This office where we are deposing you today?
A Yes, sir.
Q And besides Mr. Jim Young and Mr. Joe Young and you, who else was present during the course of that meeting?
A On occasion -- I'm not sure on all occasions -- Dr. Turner.
Q I'm focusing on this first meeting. You said "on occasion." Do you mean she was in the meeting occasionally at the first meeting?
A No. I can't say for sure that she was with the group that met every time we met. I cannot remember for sure.
Q I want to try to do this chronologically, if I can, Doctor, in the interests of developing it logically. Do you have an independent recollection as to whether or not Dr. Turner met with you, Mr. Jim Young, or Mr. Jim Young and Mr. Joe Young on the very first occasion that you are describing for me?

A I cannot say I have an independent recollection.
Q She may or may not have been present?
A She may or may not.
Q What was the substance of the discussion during the course of that meeting?
A I have no specific independent recollection of what was discussed.
Q Do you have a general recollection?
A The general recollection would be that Dr. Turner had been asked to state whether she was of the belief that this represented a suit that could go forward relative to passive tobacco smoke exposure as a cause of that diagnosis that Mrs. Wiley had.
Q What diagnosis was that?
A Adenocarcinoma of the lung.
Q And it was one of the attorneys at the meeting that asked Dr. Turner that? Is that your recollection?

MR. YOUNG: I will object. That's not what he said. He said that his general recollection was that's what the meeting was about. In fact, he said he didn't have an independent recollection that Dr. Turner was

at that meeting. So I think it misstates his testimony.

Q Doctor, you understand when the lawyers here at the table make an objection, that's an objection for the record. You just go ahead and answer my question.

THE WITNESS: Would you ask the question again?

Q Sure. Is it a fact that during the course of the meeting that you are describing for me, that one of the attorneys asked Dr. Turner if the suit could go forward?

A I do not recall.

Q You just remember the subject being discussed?

A That was why we were there. And beyond that, I cannot say that I have any independent recollection.

Q Sorry, did I interrupt you?

A No.

Q Why were you at the meeting?

A As the medical oncologist that consulted on the case, I would be asked to render an opinion about the case as to the cause of her condition.

Q You say this meeting, to the best of your recollection, took place about four years ago. So that would have been probably sometime in 1993; is that correct?

A Yes, sir.

Q Did you tell the attorneys at that meeting that you had any opinion about whether or not passive smoking or environmental tobacco smoke had any association or relationship to Mrs. Wiley's cancer?

MR. YOUNG: I will object to the question. It's been asked and answered. He said he didn't have an independent recollection of the discussion, of the specifics of the discussion that occurred that day.

Q You can answer, Doctor.

A I don't recall.

Q You don't recall whether you discussed that subject or not?

A I don't recall whether I was asked to render an opinion.

Q Do you recall being asked to do anything?

A No. As I would characterize it, it would be an informative meeting relative to the fact

that there has been a complaint brought. And if it goes forward, you will be asked to discuss your relationship and your care of the patient.

Q And who said that?

A I do not recall.

Q It wasn't Dr. Turner?

A Not to my recollection.

Q It wasn't you talking to yourself. So that would have to be one of the attorneys at the meeting, right?

A I presume that to be the case.

Q And when you say a complaint had been brought, was it your understanding at that point in time a lawsuit had been filed?

A I am not sure. I'm not sure if it was to that point. I just don't recall.

Q And you told me earlier that you're not sure whether Dr. Turner was or was not present at that very first meeting. But if she was, that would have been discussed insofar as her participation of the meeting is concerned; is that right?

A Yes, sir.

Q Anything else that occurred in that first

meeting that you can recall?

A Not that I recall.

Q Were you given any documents at that meeting, papers, writings of any kind?

A Not to my recollection.

Q Did you give anybody any papers or writings of any kind?

A Not to my recollection.

Q Okay. Let's go to the second such meeting that you can recall. Where did it take place?

A All the meetings have taken place here. I cannot say I can differentiate first, second, third, or fourth in my mind as to when it was.

Q That was my next question. Do you remember when the second meeting was?

A No, sir.

Q Do you remember in relationship to the first meeting, how many months had elapsed?

A It seems like there was some time that passed. And then the meeting was perhaps six months later, again, to sort of update what the circumstances were as to whether it was going to go forward.

Q Who was present at the second meeting?
A I don't recall.
Q Attorneys?
A Yes. Any time that I am discussing such a meeting, it would have been with one or more attorneys.
Q But you don't remember which ones?
A No, sir.
Q Do you remember whether Dr. Turner was present at that second meeting?
A No, sir.
Q She may or may not have been?
A May or may not have been.
Q And is what you just related to me that was discussed at the meeting sort of an update of the litigation?
A To the best of my recollection.
Q By an update of the litigation, can you be more precise as to what was discussed?
A As I remember, it would have to do with what's the likelihood that you're going to need to be ready to give a deposition in the near future, to be prepared, and when that time frame might be.
Q Anything else that was discussed that you

can recall?

A Not to my recollection.

Q Let's go to the third such meeting that you can recall. When did it occur?

A I do not recall.

Q Can you tell me how many months approximately had elapsed when the third meeting occurred in relationship to the second meeting?

MR. YOUNG: I will object. He said he didn't recall.

MR. WAGNER: I'm asking him a different question.

MR. YOUNG: It's the same question.

MR. WAGNER: Your objections are educating the witness, and I object to your objections.

MR. YOUNG: I am objecting for the record.

MR. WAGNER: They are speaking objections.

MR. YOUNG: You call them what you like. You have my objection.

MR. WAGNER: Go ahead. You can answer.

THE WITNESS: Can you ask the question again?

Q Sure. Even though you can't tell me the date, can you recall in relationship to the second meeting how many months had elapsed approximately when the third meeting occurred?

A No, sir.

Q Who was present at the third meeting?

A I do not recall.

Q Can you recall what was discussed?

A No, sir.

Q You don't have any recollection at all?

A No, sir.

Q But all these meetings took place here where we are deposing you today?

A Yes, sir.

Q Now, you said to me earlier there were four to six such meetings. So let's go to the fourth one, which would have been either the last or close to the last. When did it occur?

A I do not recall.

Q Do you recall when it occurred with respect to when the third one occurred, how many

months had elapsed?
A No, sir.
Q Do you recall who was present at that meeting?
A No, sir.
Q Do you recall what was discussed?
A No, sir.
Q Do you know why you were there?
A I would say to update the status as to what I might be needing to do relative to the deposition, about the case.
Q And what was your understanding with respect to what you needed to do?
A To be prepared to review the information and discuss my relationship with the patient and recommendations or care.
Q Now, if I asked you the same questions I have been asking you with respect to the fifth and sixth meetings, presuming there were six meetings instead of four, would your answers be the same?
A Yes, sir.
Q Did you have any meetings with the attorneys for the plaintiff in this case that precisely focused upon the deposition you

are giving us today and preparing you for that deposition, this very deposition I should say?

A The meetings that I have had have been informational relative to being sure I understand what my requirements are and what I need to bring, what I need to have available when that might occur.

Q Was this a face-to-face meeting when these subjects were discussed?

A Yes.

Q With whom did you meet?

A I'm at this point moving forward to the meeting that we had on Tuesday night of this week.

Q So you had a meeting Tuesday night of this week. And with whom did you meet?

A With Jim, Joe, Greg, Max, and Dr. Turner.

Q Was anybody else present at any time during the course of the meeting?

A No, sir.

Q Did that meeting also take place here in the conference room where you are being deposed today?

A Yes, sir.

Q What time did that meeting start?
A 6:30.
Q P.M., I take it?
A Yes, 6:30 p.m.
Q How long did it last?
A I left at an hour and a half.
Q About 8:00?
A Yes, sir, 8:00 p.m.
Q Tell me generally, first of all, what was discussed during the course of that meeting.
A It was a general discussion of what to expect today, who would be involved on both sides of the case. There was one attorney, in fact, that had been presumed was on the side of the plaintiff and in point of actual fact was not.
Q Presumed by whom?
A I had presumed in looking over the names of the lawyers as to who was representing whom after I came in last Wednesday and got sort of an idea of, you know, what the format was going to be.
Q So the presumption you are talking about was your presumption?
A Yes, sir.

Q What else was discussed?

A It was rather generic. As I said, you might say it was a pep session to talk about the fact that this will require a longer period of time than I had anticipated and be prepared in terms of counseling outpatients and be prepared to go all day.

MR. OHLEMEYER: I'm sorry. Did you say prep session or pep session?

THE WITNESS: A pep session, just meaning to go over what it's going to consist of, be ready, that type of --

MR. OHLEMEYER: A P-E-P?

THE WITNESS: Pep.

MR. OHLEMEYER: Thank you.

BY MR. WAGNER:

Q Doctor, what else do you recall being discussed?

A There was discussion about being sure that we had all elements of the chart and -- it seemed that there had been some concern about parts of the chart, when they had appeared and in whose possession they were in when Dr. Turner had begun her deposition, and wanted to be sure that we had a complete

chart, that we had all elements of the chart that would be pertinent before the chart would be closed.

Q What else was discussed?

A I don't remember any other specific details. The admonition was: Relax, tell the truth, and we will go from there.

MR. WAGNER: Off the record here.

(Discussion off the record)

Q During the course of the meeting, did you show others or anybody else who was present at that meeting Exhibit 2?

A No, sir.

Q Did you bring Exhibit 2 to the meeting with you?

A I do not recall.

Q Did you tell the others at the meeting that you had prepared Exhibit 2?

A I asked if it would be appropriate if I brought notes to the meeting and if I should bring copies.

Q What did they say?

A Yes.

Q Did anybody ask you to prepare Exhibit 2?

A No, sir.

Q It's just something you did on your own?
A Yes, sir.
Q When is the first time that you showed Exhibit 2 to any of the plaintiffs' lawyers?
A Right before we met today. And Jim brought it in to be sure it was appropriate before we started.

MR. YOUNG: When you say "brought it in," he means when you asked me this morning when you could look at the materials before the deposition, I went down and got the materials from him and brought them into here. I want the record to be clear.

MR. WAGNER: I understand. Thank you.

Q So am I correct, Doctor, that the first time any of the plaintiffs' lawyers saw Exhibit 2 was today?
A Yes, sir.
Q And prior to today, did you ever show Exhibit 2 to anybody else? You have to answer out loud, Doctor.
A No, sir.
Q You never showed it to Dr. Turner?
A No, sir.

Q Did you discuss the fact that you had made Exhibit 2 with Dr. Turner?
A She was at the meeting Tuesday night when I had mentioned I had taken some notes from some basic medical oncology texts, so she would have been aware of that information. But I did not show the preparation to anyone.
Q At the meeting on Tuesday that you are describing for me, did anyone ask you about your opinion that related in any way to cigarette smoking or cigarette smoking and health?
A Not that I recall.
Q Was the subject of environmental tobacco smoking or passive smoke discussed at the meeting?
A Not beyond just the aspects of what the case is about. I don't recall any discussions of information back and forth.
Q So that I'm correct then at the meeting on Tuesday night, there was no discussion whether or not environmental tobacco smoke was a cause of Mildred Wiley's cancer?
A Ask me that question again.

Q Sure. I'm correct then, am I not, Doctor, in stating that at the meeting on Tuesday night, there was no discussion of environmental tobacco smoke or passive smoking being a cause of Mildred Wiley's cancer?

A Not that I recall.

Q Do you recall anything that Dr. Turner said at this meeting on Tuesday night?

A She discussed some frustration about the elements of being sure the chart was together and that we clearly had the right information because of the -- whatever word we use -- "mysterious" reappearance or disappearance last Wednesday when I was here.

I don't remember anything further specifically except that she did mention that she had been required to submit information relative to her Barney and Calvin experience. I think she found that, in her thinking, irrelevant to this case.

MR. YOUNG: Can I interrupt you for a break?

MR. WAGNER: Sure. Let me finish

this, and we will break.

Q Do you recall anything else that Dr. Turner said or contributed insofar as this meeting was concerned on Tuesday night?

A No, sir.

MR. WAGNER: Let's take a break.

(Recess from 11:07 a.m. to 11:14 a.m.)

BY MR. WAGNER:

Q Doctor, we took a little break. Is there anything else that was discussed at this meeting on Tuesday night that you haven't told me about at this point?

A Not that I recall.

Q Now, you said that you left at approximately 8:00, right, 8:00 p.m.?

A Yes, sir.

Q And did the others stay?

A I had a commitment, and I was told it was basically over. But I have no firsthand knowledge as to what continued.

Q Let me ask the question: When you left the room where the meeting was held, were the others still present in that room?

A Yes.

Q And that included Dr. Turner?

A Yes, sir.
Q Have we now covered, Doctor, to the best of your recollection all of the meetings that you can recall that you have had with the plaintiffs' attorneys?
A Yes, sir.
Q Have the plaintiffs' attorneys either personally delivered to you or caused to have delivered to you any documents of any kind: writings, articles, texts, things like that?
A Only with regard to I believe there has been some communication from the law firm, but nothing else to my recollection.
Q By "communication from the law firm," you mean correspondence?
A Yes.
Q Of course, you got the deposition notice which we marked as Exhibit 1?
A Yes.
Q And you've gotten some letters from them from time to time which we are going to look at in a little while; is that right?
A Yes.
Q Does anything else come to mind in response

to my question?

A No, sir.

Q Other than conversations you have had with Dr. Turner and conversations that you have had with plaintiffs' lawyers, have you talked to anyone else about this case? And by "this case," I mean the lawsuit and the claims in the lawsuit.

A Other physicians?

Q Anybody, whether physicians --

A My family is aware of what I'm doing today. I have not discussed details of this case outside of those communications.

Q With your family, you mean?

A With anyone.

Q I mean, I'm excluding your family. I mean, you may have talked to your wife about your testimony. I'm not interested in that. I'm not quite sure what your answer is, because you qualified it by saying "details."

But have you talked about the case in general with anybody outside of your family and the attorneys and Nicki Turner, Dr. Turner?

A I have mentioned from time to time I am sure

with one or more of my associates that I'm involved in such a case, not the least of which was Dr. Doyle Stephens who was actually the first doctor to consult. I'm still not sure how I ended up here and he didn't.

As far as beyond a general description of the case as to I'm going to be discussing this case, the case that Dr. Turner and I are involved with, such and such a date, not that I recall any details beyond that.

Q What did you talk to Dr. Stephens about?

A How he could continue to be so lucky that he was the first doctor that was requested to come by and see this patient and I ended up seeing her. As I recall, that was the substance of it.

Q Have you had any discussions with anyone else whom you know to be an expert witness in this case?

A No, sir. I'm only aware of Dr. Turner and myself. Who else would consist of expert witnesses?

Q Well, are you asking me a question? I'm sorry.

A Your question was have I talked to any expert witnesses about the case.

Q Let me rephrase it so you and I are both clear. Have you talked to anyone -- and let's exclude Dr. Turner -- whom you know to be an expert witness in this case or to be designated as an expert witness in this case?

A No, sir.

Q Have you talked to anyone besides Dr. Turner whom you believe to be a witness in this case, whether an expert or not?

A No, sir.

MR. YOUNG: For clarity, that excludes the period of care and treatment where he would have had discussion with the widower during Mildred's hospitalization?

MR. WAGNER: Sure.

Q For the record, the record can reflect that my questions were in the context of conversations that you may have had that would have occurred subsequent to the time that Mildred Wiley died and your professional treatment of her ended. You understand that.

A Yes, sir.
Q From the conversations you have had with plaintiffs' attorneys, you expect to be a witness at the trial of this case; is that correct?
A Yes, sir.
Q Are you charging the plaintiffs' attorneys for your work as a witness?
A No, sir.
Q Have you kept any time records or notes relating to your work in this case?
A No, sir.
Q As you sit here today, Doctor, do you intend to express any opinions at the trial of this case?

MR. YOUNG: I object to that question. It asks him to draw legal conclusions and speculate as to what questions he might be asked to answer that delve into his area of expertise as a medical physician.

MR. WAGNER: Let me state this on the record. And, Jim, you correct me if I am wrong about this. But we have asked from time to time both verbally and in writing

whether or not Dr. Songer is an expert witness. And we have also asked for 26(b) disclosures about your expert witnesses.

We have none of that with respect to Dr. Songer. And this is my opportunity and the defendants' opportunity to find out whether or not Dr. Songer expects to testify as an expert witness at this trial and as an expert witness at trial to express any opinions.

It's the only opportunity defendants have to do that since you have never furnished us with any 26(b) disclosures, nor have you told us unequivocally whether or not you intend to offer him as a expert witness. That's the reason I am asking him the question.

Now, if you can represent to me that Dr. Songer is not going to express any opinions at the trial in this case, I can avoid this line of questioning. But if you can't, then I can't.

MR. OHLEMEYER: For the record, I don't necessarily disagree with Mr. Wagner. But I do disagree to this extent: We were

told last week at Dr. Turner's deposition that although the plaintiffs might offer opinion testimony from Dr. Songer with regard to his treatment, he was not being offered for anything aside from his treatment.

That may make matters a little clearer, I think. I assume that's still your position.

MR. YOUNG: Well, our position is he is a medical treater. He has opinions with regard tc the history that he took, the examination that he made, the diagnosis, and the treatment has entitled him to have medical opinions regarding prognosis and causation within the realm of his treatment as a treating physician.

And those are the areas that he is asked to give opinions about that require him to be determined to be an expert to give expert testimony, to give opinion testimony, he is entitled to do that. So with that, I think we're on the same page.

MR. OHLEMEYER: I think so. He is not an individual that has been specifically

retained by you to offer opinions in the case beyond those that he developed in connection with his diagnosis and treatment of the patient?

MR. YOUNG: Correct.

MR. WAGNER: I guess I'm still a little mystified because I don't know what those opinions are.

Q Doctor, let me ask you this question then. You can tell me whether you know the answer or you don't know the answer.

Do you have any expectation from any source that you will be asked to express opinions at the trial of this case?

A Yes.

Q Do you have any understanding as to what those opinions will be?

A No.

Q From what source do you have the expectation?

A I presume that everyone that was involved with her care would be asked to testify in a review of what took place with regard to her stay at Ball Memorial Hospital. And since I made certain recommendations and decisions,

I would be asked the basis for that.

Q Do you have, Doctor, any opinions about whether or not environmental tobacco smoke was a cause of Mildred Wiley's cancer?

A Yes, sir.

Q What is that opinion?

A That I have no reason to find other than what Dr. Turner found; that this is a case that can be explained by passive tobacco smoke inhalation.

Q And what are the bases for that opinion?

A My review of the case concludes that Mildred Wiley had an adenocarcinoma of the lung which was endobronchial in origin, with no other known risk factors for developing an endobronchial malignancy; and that this case can be explained by exposure to passive tobacco smoke.

Q Any bases other than that, Doctor?

A There are aspects of the case that will need to be developed to show that that is indeed the case; that the diagnosis is as I stated. But beyond that, I have no additional basis.

Q What other aspects of the case need to be developed?

A The presence of an endobronchial malignancy. My review of the record including the autopsy, in my opinion, has to be confirmed. Upon confirmation of that and assessing what potential causes would bring this about in this patient, I find no other explanation.

Q Does that complete your answer?

THE WITNESS: What was the question?

(The requested material was read back by the reporter.)

Q Now, Doctor, we have had the questions and answers read back to you by the reporter, have we not?

A Yes, sir.

Q When I asked you what other aspects need to be developed, you said that the presence of "endobronchic" malignancy needs to be developed. Is that so?

A In order to argue this case as a malignancy that was the result of passive tobacco smoking, in my opinion, that has to be confirmed that this was an endobronchial malignancy. I think we can confirm that by review of the chart.

This is a diagnosis of exclusion. And this is a typical type of diagnosis; that results in treating a patient that you eliminate other possibilities and then you are left with one which explains the case. And then that is your conclusion. And so there needs to be development along the lines of ruling out other causes for her condition.

Q Have you ruled out all other causes of her condition?

A I have ruled out all other causes for her condition other than an adenocarcinoma of the lung of endobronchial origin, which means that it originated in the lung.

Q Well, more precisely, doesn't endobronchial mean a cancer that's inside the bronchial tubes?

A Yes, sir.

Q And so is it your opinion, Doctor, that if her cancer was not an endobronchial primary, then it wasn't related to ETS?

MR. YOUNG: I will object to the form of the question.

THE WITNESS: Would you ask the

question again.

Q Yes. Is it your opinion, Doctor, that if Mildred Wiley's cancer was not primary endobronchial cancer, that it was not related to ETS, to environmental tobacco smoke?

The reason I ask the question is because you said it had to be confirmed as a basis for your opinion that she had endobronchial lung cancer.

A You could also argue if this were pancreatic cancer, since there is data that cancer of the pancreas is at an increased risk as a result of tobacco smoke, you could argue that. I do not choose to make that argument.

Q I understand that. And we will get to that in maybe a minute.

A So I think the answer is "no."

Q The answer is "no" what, to my question?

A To your question.

Q "No" what?

A That if an endobronchial origin is not confirmed, that it is not possible that this could be a case of ETS exposure. I believe

for the same rationale you could argue for passive smoke causation lung cancer, you can make the same argument for other kinds of cancer that are at increased risk from mainstream tobacco exposure. I would not choose to make that argument.

Q You would not choose to make that argument, nor would you choose to express such an opinion; is that what you are saying?

A I would say not choose to argue this as a case of pancreatic cancer and argue that as a case of ETS.

Q So what you're telling me is that you don't have any opinion that if Mildred Wiley had pancreatic cancer, that it was caused by environmental tobacco smoke?

A I would not make that argument.

Q And you would not express that opinion?

A I would not express that opinion.

Q Now, let me go back to the question I think I asked, but I don't think you answered; and that is: If Mildred Wiley did not have a primary endobronchial cancer, is it your opinion that then environmental tobacco smoke would not have been a cause of her

cancer?

MR. YOUNG: I will object. That's been asked and answered. He has given the answer "no" already.

MR. WAGNER: Your objection is noted. He hasn't answered. Go ahead, Doctor.

THE WITNESS: Ask it one more time.

MR. WAGNER: Read it back.

(The requested material was read back by the reporter.)

MR. YOUNG: Show the same objection.

A That is my opinion.

Q Just so I'm clear -- because I'm not sure how you answered my question -- that is your opinion that if she didn't have an endobronchial primary, then ETS was not a cause of her cancer?

MR. YOUNG: I will object to restating his opinion for him. I think it misstates it.

Q Correct?

A I believe that I can argue this case only as a case of an adenocarcinoma of the lung with

an endobronchial presentation, which is a result of ETS. I would not choose to argue any other origin to have been caused by ETS.

Q And is your argument, as you describe it in that respect, premised upon the endobronchial cancer being primary?

A That the adenocarcinoma of the lung presenting with endobronchial disease is the primary.

Q Now, you said in answer to my question what other aspects need to be developed, that you thought certain things like an endobronchial malignancy had to be confirmed. How is that to be confirmed? Have you confirmed it?

A I have confirmed it.

Q And how have you confirmed it?

A By reviewing the clinical history, the radiograph examination, the biopsies, the bronchoscopy, and the postmortem.

Q And when did you make that confirmation?

A I have come to that conclusion over the past two weeks.

Q Over the past two weeks. You hadn't made it before then, had you, Doctor?

MR. YOUNG: I will object to the

question as argumentative and leading.

Q My question is: You had not come to that conclusion before two weeks ago, correct? You just told me you just came to that conclusion within the last two weeks, correct?

A That's true.

MR. YOUNG: I will object to you arguing.

Q And the next question is: You had not come to that conclusion prior to two weeks ago, had you?

A Prior to my most recent review of this case, I had not concluded whether this was a 100/0, 70/30, 50/50 probability. Within the last two weeks I have concluded that this is, as I stated, an adenocarcinoma of the lung with an endobronchial presentation. So the answer to your question is "yes."

Q And in reaching that conclusion, Doctor, did you make a differential diagnosis?

A As I reviewed the case with all the information available, I don't have a differential diagnosis.

Q Sorry, go ahead. I didn't mean to

interrupt.

A When I was seeing the patient and we were working through what was going on in this case, it's obvious that I had other differential diagnoses, including breast cancer.

Q And what has happened to those diagnoses in the last two weeks?

A I have no reason to believe that this case could be explained by a primary adenocarcinoma of the breast, and there is no evidence that such was present.

Q Okay. Have you ruled out anything else in reaching these conclusions?

A My diagnosis exclusion is this diagnosis. I have ruled out or I have eliminated all other possibilities in my thinking.

Q And you feel that you are in possession of all of the information and knowledge and literature that you need to reach that conclusion; is that correct?

A Yes, sir.

Q Well, we will come back to these opinions, Doctor. But for right now -- by the way, in reaching this conclusion that you have

described for us, is there some degree of probability that you would assign to it?

A 100/0.

Q 100 percent?

A Yes, sir.

Q I want to ask you, Doctor, first of all, just without reference to the medical records -- and if you need to, you are certainly free to do that -- but just as sort of a memory exercise, can you describe for us what your professional treatment was of Mildred Wiley from the time you first saw her until the end?

Just give us sort of a verbal overview of what you can recall in that respect.

MR. YOUNG: I will object to framing anything as a "memory exercise." I appreciate your remarks that he is entitled to review the records. And I think that's what should be done, as appropriate and as necessary. I object to the characterization as a memory test or quiz.

MR. WAGNER: Go ahead.

A I would want to see my notes relative to what I wrote and what I recommended.

Q Okay. You have reviewed the medical records that pertain to your treatment of Mildred Wiley before today, haven't you?

A Yes.

Q So you don't feel comfortable answering that question without looking at those records?

A I would prefer to go through them with them available.

MR. WAGNER: Okay. Before we do that and before I forget it, would you mark this, please, as the next exhibit.

(Exhibit(s) 19 marked for identification.)

MR. OHLEMEYER: Mr. Young, while the reporter was marking the exhibit, I have asked Mr. Wagner the courtesy of asking the doctor a question that's appropriate to the area of inquiry we are in. You might recall last week I extended you the same courtesy with respect to Dr. Turner.

Be that as it may, Doctor --

MR. YOUNG: We don't think it's appropriate.

BY MR. OHLEMEYER:

Q Without reference to those records, do you

have an independent recollection or complete recollection of your treatment of Mrs. Wiley?

A No.

MR. OHLEMEYER: Thank you.

BY MR. WAGNER:

Q Doctor, I will show you what has been marked for identification as Exhibit 19. And I ask you, sir, is that a copy of your curriculum vita?

A Yes, sir.

Q And is it current and up to date as far as the information that's contained on here?

A The only thing that's not on here, as I say, we are involved with a group called the Hoosier Oncology Group, which is a cooperative cancer research group, that is basically from Indiana University. And as they write up studies that have been done, from time to time, if you had a number of cases that have been submitted for study, they will include your name. And it's strictly a mechanism by which they recognize people around the state for sending patients.

On none of those papers did I have any input whatsoever. My name simply appeared to do a review. They were like, "This is going to be sent out. Is it okay if we put your name on it?" But otherwise, it's current.

Q This curriculum vita says that you were Assistant Clinical Professor of Medicine, Indiana University School of Medicine, September 1973, correct?

A Yes, sir.

Q But you no longer hold that position, do you?

A That is the designation for this teaching that has to do with the first two years of the Muncie Center for Medical Education. They affix that title to those of us that teach. It's a nonsalaried designation.

Q That's a designation you still have today?

A To my knowledge.

Q Earlier I asked you about whether or not you had ever written any articles or books that had been published. And you said if they were, they would be on here. I don't see any. Does that mean you never have written

anything that's been published?

A That's true. There have been things published with my name on it, but I didn't write it.

(Exhibit(s) 20 marked for identification.)

Q Doctor, I will show you what has been marked for identification as Exhibit 20 and ask you, sir, if you have seen that document before and read it?

A May I refer to my notes to see if I have that?

Q Sure.

A I don't believe I have seen this. I think I have read descriptions of it as it was stated by Dr. Turner on her consultation. I don't recall having seen this sheet of paper.

Q Well, this is a radiologist's report of an X-ray, chest X-ray, of Mildred Wiley taken on April 30, 1991; isn't that so?

A Yes, sir.

Q And did you know that Mrs. Wiley went to see Dr. Patel in late April, early May of 1991?

A Yes, sir.

Q Do you recognize this as being a radiologist's report of an X-ray that was taken in connection with her consultation with Dr. Patel?

A Yes.

Q Who is Dr. Patel? Do you know him personally?

A No. There are a number of Patels that practice in Marion. And I have never been able to keep it straight.

Q So you're not personally acquainted with him?

A No, sir.

Q And you don't recall having seen this radiologist's report before April 30, 1991, that's dated April 30, 1991, Exhibit 20; is that correct?

A That is correct. My familiarity, I believe, is that Dr. Turner had dictated the synopsis of this report. But I do not recall ever having seen this actual report. And I do not recall if it was in the hospital records.

Q All right. This radiologist's report indicates there in the third line, second

and third lines, the presence of apparent atelectasis, I believe, it's pronounced; is that correct?

A Yes.

Q And isn't that --

MR. YOUNG: Wait a minute. I will object to that, Dick, because that -- you used the words "the presence of." I think the document speaks for itself. And that's not what the document says.

Q Let me rephrase the question. What the document says there in the second sentence, "There is elevation of the right hemidiaphragm which is associated with apparent atelectasis," right?

A Yes.

Q What is that?

A Atelectasis is where you're not getting air to a particular part of the lung because of a block. And so the lung somewhat collapses, like an inner tube might collapse. So it will show up on an X-ray as a darker area than normal lung.

(Exhibit(s) 21 marked for identification.)

Q Have you seen Exhibit 21 before today, Doctor?

A No, sir.

Q Do you recognize this as a medical record written by or dictated by Dr. Patel?

A Yes, sir.

Q On the occasion of seeing Mildred Wiley, May 6th, 1991?

MR. YOUNG: I will object to questions about who saw what and who dictated what. The document speaks for itself and is dated. I think you can reference those dates. But as to who wrote what and who said what, I think the document speaks for itself.

Q You see in the upper left-hand corner, after the word "Admitted," the date May 6, 1991, Doctor?

A Yes, I see that date.

Q Do you see the name in the lower right-hand corner, R.I. Patel, M.D.?

A Yes, sir.

Q You see this relates to Mildred Wiley, do you not, sir?

A Yes.

Q Do you recognize this as a typical medical record that a doctor would dictate in reference to his seeing a patient?

A It's a consultation. It's somewhat limited, but it certainly would be consistent with an interchange that you would have with a patient.

Q Let me ask you a general question. Did you examine or have you read any documents that pertain to Mildred Wiley's medical treatment or health that would have been created or dated prior to the time she was admitted to Ball Memorial Hospital and you began seeing her?

A Yes, sir.

Q What documents did you see?

A Well, I dictated in my consultation history that went back as far as the fall of 1990, as did Dr. Turner, as did Dr. Scott Walker. So, yes, in review I'm aware there was history that "annodated" her presentation to Ball Memorial Hospital.

Q And did you review those medical records and health records yourself, or did you just get from Dr. Turner what she knew about the

case?

A I don't recall.

Q You don't recall either way?

A I don't recall. As I have already said, I did not have access to any of the information from Marion General. I would have had access to records from Ball Memorial Hospital such as examinations that were ordered prior to her hospitalization because that was done at Ball Memorial Hospital. So I did not see these prior to today.

Q And I presume you never discussed her case with Dr. Patel?

A That's correct.

Q By "her," I mean Mildred Wiley, of course.

A Yes, sir.

Q You would note here in Exhibit 21, Doctor, that at the end of the first paragraph, he states that -- strike that. In the preceding sentence, he notes, "She has not traveled anywhere, no unusual exposure to any chemicals or fumes." Do you see that?

A Yes, sir.

Q It's fair, isn't it, that Dr. Patel's

impression was, "This patient has right middle lobe syndrome with residual atelectasis"?

A That is true.

(Exhibit(s) 22 marked for identification.)

Q Have you seen Exhibit 22 before today, Doctor?

A No, sir.

Q Pardon me?

A No, sir.

Q Do you know what Exhibit 22 is from looking at it?

A Yes, sir.

Q What is it?

A It's Dr. R.I. Patel's findings at bronchoscopy on 5-6-91.

Q So Dr. Patel performed a bronchoscopy on Mildred Wiley, according to this document, on May 6, 1991?

A Sorry?

Q Dr. Patel performed a bronchoscopy on Mildred Wiley, according to this document, on May 6, 1991, right?

A That is correct.

Q And you did receive information about that bronchoscopy during the course of your treatment of Mrs. Wiley, correct?
A As dictated in Dr. Turner's consultation.
Q But you did receive information about it?
A Yes, sir.
Q And can you tell us for the record, please, what is a bronchoscopy?
A It's a procedure by which you enter the back of the throat, and you then pass into the larynx, pass the vocal cords. And then you are in a position to evaluate the larger airways that go into the lungs.
Q And what is it that's used to do that?
A It's a flexible fiberoptic instrument.
Q Which allows the physician who is administering the procedure to see into the areas where the tube goes, correct?
A Yes, sir.
Q And is that what happened here when Dr. Patel did this bronchoscopy on Mildred Wiley?
A By his description, yes, sir.
Q And take your time to read this, if you like. But isn't it accurate to say that in

summary, when Dr. Patel did his bronchoscopy on May 6, 1991, that he found no intrabronchial lesions?

A That is what he dictates here.

Q And that's what this record says, right?

A That is correct.

Q And in laymen's terms, that would mean he didn't find any cancer inside the bronchial tubes of her lungs, right?

A My interpretation would be that he did not see any tumor growing out into the airway. That would not rule out a tumor growing along the airway, which could result in these areas of narrowing which he described. I'm not a pulmonologist. But as I would read this, I would say that he did not see any growth of cancer identifiable growing out into the lumen that you would call an endobronchial lesion.

Q He didn't see any cancer of any kind, did he?

MR. YOUNG: I object to the form of the question. I object to going beyond what was discussing or asking what he saw or didn't see other than what is reported in

the report.

Q According to this report, Doctor, Dr. Patel didn't see any cancer, did he?

MR. YOUNG: Same objection.

A He does not report seeing any cancer.

Q And, again, according to Dr. Patel's report, Exhibit 22, the bronchoscope that he was using, he was able to get those into the bronchial tubes, wasn't he?

MR. YOUNG: Sorry, I missed the question. Could you read it or let me read it back.

(The requested material was read back by the reporter.)

MR. YOUNG: I object as going beyond what Dr. Patel was able to do or not able to do beyond what is stated in his report.

A The only description I see where he advanced the tube was into the right bronchial tree. I don't see any description beyond that in the fourth line that he says he made any attempt to enter any of the other bronchi.

He describes inflammation and hyperemia. He describes narrowing. He

describes deformity. I see no description here that he attempted to advance the bronchoscope past that initial entry into what he calls the right bronchial tree.

You have a right bronchial tree and a left bronchial tree. He entered the right bronchial tree. He may have done it. I don't see that it's documented here.

Q He describes, doesn't he, here -- I'm quoting about halfway down through the paragraph entitled PROCEDURE -- "The right lower lobe bronchus was also a little bit deformed, but there was not much inflammation in the right lower lobe. The right middle lobe and the right upper lobe bronchi were quite inflamed and quite hyperemic?"

A He does not say he entered them. It would be possible that he did. I've not seen this report before.

Q Typically, when someone administers a bronchoscope such as we're having described here in Exhibit 22, they explore as much of the bronchial tubes as they can; isn't that correct?

A I'm not a pulmonologist, but that would be in the framework of the procedure to do that.

Q And no place in this report do we see any indication that he had any difficulty entering the bronchial tubes, do we, Doctor?

MR. YOUNG: I will object. This document speaks for itself.

A He describes some problems with the patient coughing and he had to administer more anesthetic. Beyond that, he doesn't describe whether he had any difficulty or didn't have difficulty.

Q The answer to my question is that there is no description in this report, Exhibit 22, by Dr. Patel of any difficulty in advancing the bronchoscope; isn't that correct?

MR. YOUNG: I will object. That's been asked and answered. He has given you his answer.

A I made the earlier point that he doesn't say he went past the right side of the bronchial tree. So I have no information from reading this report whether he attempted to go further or if this was all a matter of

moving the end of the scope around looking at the various airways. I have no comment beyond that.

Q Okay. He also obtained bronchial washings according to this report; isn't that correct?

A Yes.

Q And what are bronchial washings?

A You take a specimen and inject, I believe it's normal saline in an area. And then cells are washed into that solution. And it's sent for, what he says here is cytology and cell block plus bacterial types of testing.

MR. WAGNER: Mark this, please, as Exhibit 23.

(Exhibit(s) 23 marked for identification.)

Q Have you seen Exhibit 23 before today, Doctor?

A No, sir.

Q Can you tell by looking at it what it is?

A It is a pathologic examination of the fluid.

Q It's a pathological report of the bronchial washings that Dr. Patel obtained during his

bronchoscopy, isn't it?

A That is correct.

Q And what is the impression that is on this document?

A Inflammatory cells; red blood cells, which suggest hemorrhage; macrophages and ciliated respiratory epithelial cells present.

Q No finding of any cancer cells?

A No malignancy.

Q What is the date of that report?

A It appears to be submitted 5-6 and dictated 5-7.

(Exhibit(s) 24 marked for identification.)

Q Doctor, it's fair to say, isn't it, that as of May 6, 1991, as a result of the bronchoscopy and the pathological examination of the bronchial washings obtained by Dr. Patel, that there was no indication that there was any presence of any cancer in Mildred Wiley's bronchi?

MR. YOUNG: I will object to the form of the question as improper. It's an unfair question. It's not a fair question or fair statement. It goes well beyond what

appears in Exhibits 22 and 23. And it asks for the doctor to give testimony and opinions about examinations and studies that were done that he was not present at, doesn't know anything about, and asks him to speculate.

MR. WAGNER: You can answer, Doctor.

A This does not constitute all of the studies that were done at flexible bronchoscopy. This would be the cytology. I do not see the cell block. I do not see brushings. I do not see biopsies. I do not see this as the total assessment of what was going on in her lungs on 5-6-91.

Q Let me reask my question, Doctor, because I don't think you answered my question. My question, Doctor, is: By looking at Exhibit 22 and looking at Exhibit 23, the flexible bronchoscopy report of Dr. Patel and the pathologist's report on the bronchial washings obtained by Dr. Patel on May 6th, 1991, there is nothing in either one of those documents that would indicate the presence of cancer in Mildred Wiley's

bronchi on May 6, 1991?

MR. YOUNG: I object to the form of the question.

Q Is that correct, Doctor?

A The two sheets of paper that I have reviewed do not diagnose cancer.

Q As a matter of fact, when you wrote your consult note after seeing Mildred Wiley, you referred to these reports, did you not?

MR. YOUNG: I will object to the form of the question. I think in fairness to the witness you ought to show him the report you are referring to.

MR. WAGNER: Let's withdraw the question. We will look at your report in a little bit.

Q Now, Doctor, you have in front of you there Exhibit 24.

A Yes, sir.

Q What is Exhibit 24?

A It's what we refer to as the face sheet for a patient that is discharged from Ball Memorial Hospital, actually --

Q Isn't it an admission?

A It's an admission sheet that is generated

upon the patient arriving at the hospital and is completed upon discharge from the hospital.

Q I see. Is it the practice then at Ball Memorial Hospital on an admission record such as we see on Exhibit 24 then to write about things that occurred after the patient was admitted?

A Under "PROCEDURES"?

Q Yes.

A Yes, sir.

Q Well, anyplace on such a form.

A Yes, sir.

Q So what we see here in the bottom half of Exhibit 24 about "Metastatic adenocarcinoma of the lungs secondary to secondhand smoke" and so forth, that all would be typically done on an admission sheet for a patient; is that what you are saying?

A No, sir. This sheet with nothing written on it or typed on it is put together when the patient is admitted to the hospital. The admitting physician is listed there, insurance, basic information.

Upon discharge from the hospital,

you're required to enter principal diagnoses, other diagnoses, list procedures that took place, and disposition as to what happened to the patient.

Q There are signatures in the lower right-hand corner, right?

A That is correct.

Q Does your signature appear there?

A No, sir.

Q So you didn't prepare the information that's on the bottom half of this Exhibit 24?

A No, sir.

Q Why was Mildred Wiley admitted to the hospital?

A I would like to refer to the record.

Q Please do.

MR. FURR: I don't mean to be rude, Doctor, but I have to leave. You all have a happy Halloween, and we will see you next week.

(Mr. Furr departs the deposition room.)

MR. YOUNG: Counsel, would you agree that Exhibits 12, 13, 14, 15, and 16 constitute the hospital records?

MR. WAGNER: Sure. Whatever the doctor wants to look at that refers to her care and treatment, he can.

MR. YOUNG: And maybe something in 11 that might be of assistance. I don't know.

MR. WAGNER: Doctor, let me help you out a little bit. Let me show you what I will ask the reporter to mark as Exhibit 25. Maybe I can speed the process along a little bit.

(Exhibit(s) 25 & 26 marked for identification.)

BY MR. WAGNER:

Q Doctor, maybe you found what you are looking for.

A I am looking for Dr. Scott Walker's admitting history and physical which I have seen.

Q I can give you that, Doctor. I can make it easy for you.

MR. WAGNER: Let's break now and come back after lunch.

(The deposition was recessed for lunch from 12:30 p.m. to 1:10 p.m.)

BY MR. WAGNER:

Q Doctor, I show you what has been marked for identification as Defendants' Exhibits 25 and 26. And have you seen those documents before?

A I have not seen 25. I have seen 26.

Q You recognize Exhibit 25 as a Ball Memorial record relating to surgery scheduling for Mildred Wiley?

A Yes, sir.

Q And having reviewed those two documents, can you now answer the question I posed before lunch which is: Do you recall why Mildred Wiley was admitted to Ball Memorial Hospital in May of 1991?

A She was admitted by Dr. Scott Walker with the chief complaint of low back pain and radiating pain down her leg. And he was anticipating, after some further evaluation, doing surgery, what he calls a decompressive laminectomy for spinal stenosis.

Q Doctor, looking at Exhibit 26, Dr. Walker's -- I suppose we can call this an admission record, can we not?

A It would be called an admitting history and

physical.

Q And would Dr. Walker have taken a history from Mildred Wiley?

A Yes.

Q And he recited that history in this Exhibit 26, did he not?

A That is correct.

Q And he noted in the history a present illness. She apparently had an accident where she fell down on March 7, 1991.

A That is correct.

Q He then notes in the next sentence, "The patient had persistent pain since that time and over the past week or so has been quite progressive," right?

A Correct.

Q Flipping down to the "Past Medical History" section, he notes, I believe, in the fourth sentence there, "The patient did have recent pneumonia," correct?

A That is correct.

Q Is pneumonia or persistent pneumonia a risk factor for lung cancer?

A No, sir.

Q He also noted "that she has had a cough

since a flu-like syndrome in October 1990," correct?

A That is correct.

Q And in the last sentence, "Past Medical History," he states, "Three weeks ago she underwent bronchoscopy because of an abnormal chest X-ray, and the findings did not indicate any evidence of malignancy and it was felt that she had pneumonia."

That's a reference, is it not, to the bronchoscopy and the pathological examination of the washings by Dr. Patel that we looked at earlier?

MR. YOUNG: I will object because the document speaks for itself. And the document does not refer to Dr. Patel's records. And your question asks for speculation.

MR. WAGNER: You can answer the question.

A The way he describes it, I would say that he could have gotten that history from the patient; that she would have told him this. He could have had access to the information that I looked at. He could have talked to

Dr. Patel.

Q My question, Doctor, is a little different than what I think you are answering. I don't mean to interrupt you. Let me rephrase it.

Do you know of any bronchoscopies that Mildred Wiley underwent three weeks before Exhibit 26 was written other than Dr. Patel's?

A No, sir.

Q So you and I can conclude it was Dr. Patel that he was referring to; isn't that so, sir?

A Yes, sir.

Q And in the review of the "Systems" there in the third line, he noted that, "The patient does not describe chest pain but has had a persistent cough;" is that correct?

A That is correct.

Q Is Dr. Walker an orthopedic surgeon?

A That is correct.

Q Is he in your group?

A No, sir.

Q Now, if we can go to the second page -- and you have examined this document before, have

you not, sir?

A That is correct.

Q If we can go to the second page, you see the section that's marked, or rather designated I should say, "IMPRESSION"?

A Yes, sir.

Q He has written here, "Destructive process, L2 spinous process. Rule out neoplastic process," right?

A That is correct.

Q And neoplastic is a reference to a tumor, correct?

A General term for a malignancy, that is correct.

Q Do you know what the destructive process, L2 spinous process is that he was referring to?

A Am I aware that was found to be the case?

Q Yes.

A Yes, sir.

Q And one of the things that Dr. Walker was indicating by the words "rule out neoplastic process" was the possibility of a malignant tumor of the spine; is that correct?

A Yes.

MR. YOUNG: I will object to going

outside the scope of the document -- it speaks for itself -- and asks what Dr. Walker was thinking or what he was ruling out or what he was talking about when he made the notation and asks for speculation.

Q Is the answer to my question, "yes," Doctor?

THE WITNESS: Would you ask it again, please.

Q One of the things that Dr. Walker was focusing on when he wrote his report here was the possibility of a malignant tumor in the spine?

A That is correct.

Q Then do you see down there in the "PLAN," do you see that section called "PLAN"?

A Yes, sir.

Q It says, "The patient is from out of town and has had some degree of workup in the past, but apparently is unaware of the lesion in L2." What does he mean by that?

MR. YOUNG: I will object to asking this witness to interpret what Dr. Walker means when he makes a notation in his notes. Dr. Walker would be the person to ask that.

Q Doctor, in your practice, you typically review medical records that are written by other doctors pertaining to your patient?
A That is correct.
Q And you have to read and interpret what other doctors have said about your patient?
A That is correct.
Q All right, Doctor. And that's what you would do when you would read Dr. Walker's report that's Exhibit 26, correct?
A That is correct.
Q Now, when he said "but apparently is unaware of the lesion in L2," what is he referring to, in your opinion?
A She was unaware that there was any possibility that this was a malignancy.
Q And then he notes the persistent anemia. She apparently had some degree of anemia at the time?
A That is correct.
Q Did you ever treat her for that?
A No, sir.
Q And in the second and last lines, he says, "We will plan to obtain a bone scan and appropriate blood studies. Chest X-ray to

be obtained." Why would he, in your opinion, want to obtain a bone scan?

A He would be looking for other possible sites. He knows he's got one in the second lumbar, and so a bone scan would be looking at the entire bony skeleton to see if there were other abnormal areas.

Q You say he knows he's got one site. One what?

A He's concerned that this process going on in the second lumbar vertebra is a neoplastic process. And if it's in one place, it could be in another. And that would be his reasoning, in my opinion, as to why he would get a bone scan.

Q In plain and simple terms, he was concerned that she had cancer of the spine?

MR. YOUNG: I will object to the form of the question.

Q Wasn't he?

A He was concerned that she had cancer in the spine.

Q Thank you. Let me show you what I will ask the reporter to mark as Exhibit 27.

(Exhibit(s) 27 marked for

identification.)

Q Have you read and examined Exhibit 27 before today, Doctor?

A Yes, sir.

Q Exhibit 27 is the report of Dr. Turner's examination of Mildred Wiley on May 29, 1991; is that correct?

A That is correct.

Q And Dr. Turner states in the first sentence that, "Ms. Wiley is a 56 year old white female who is admitted with a destructive lesion of L2;" is that correct?

A That's correct.

Q Dr. Turner is stating in substance she may have spinal cancer?

MR. YOUNG: I will object. I think these line of questions ask for the doctor to speculate what these other doctors have to testify. I think, as you have indicated, he can tell what his interpretation of what those things mean. But those are his interpretations, not to be confused with what each of those other reporting doctors mean when they write something.

MR. WAGNER: Do you remember the

question, Doctor?

A She uses in her "IMPRESSION," Destructive lesion L2, rule out infectious, rule out metastatic lesions." So she would have been concerned about infection and a malignancy.

Q Doctor, it's also fair to say, isn't it, as a result of what we looked at up to this point in time with this medical record, that it's perfectly possible that Mildred Wiley, when she entered Ball Memorial Hospital, had a primary spinal cancer?

MR. YOUNG: Object to the form of the question.

THE WITNESS: Would you repeat the question?

MR. WAGNER: Read it back.

(The requested material was read back by the reporter.)

A That is possible.

Q Thank you, sir. Looking again at Exhibit 27, about halfway down through the first paragraph, so you see where she's talking about the MRI there, Doctor?

A Yes, sir.

MR. YOUNG: Is this on the first

page?

MR. WAGNER: Yes, sir.

Q She says the, "MRI was suggestive of a slipped disk," and so forth. Do you see where that is?

A Yes.

Q Epidural steroids were recommended. And then she refers to -- she says, "Because of the persistent cough, she was referred to Dr. Patel after a chest X-ray revealed atelectasis of the right middle lobe with infiltrate involving the posterior segment of the right upper lobe. It was suspected that she may indeed have a right hilar mass as well and right middle lobe syndrome. The left lung was relatively clear."

Then she states, "The patient underwent bronchoscopy by Dr. Patel in early May. Cytologies were checked and all were negative. The washings were all negative. It was felt that it was probably most likely an atypical pneumonia or Mycoplasmim or Chlamydia type of infection," correct?

A Correct.

Q Dr. Turner received some history, either

looked at the documents that we have seen earlier about the bronchoscopy performed by Dr. Patel, or at least relied upon that history, correct?

A That is correct.

Q Do you have any knowledge, Dr. Songer, as to whether or not Dr. Turner routinely asks patients of hers whether or not they have been exposed to environmental tobacco smoke or secondhand smoke?

A I do not know.

Q This report on page 2 in the "PHYSICAL EXAMINATION," Doctor, you see just below the midpoint of that paragraph, she has a reference to breast. Do you see that?

MR. YOUNG: I don't see it. How many lines down is that?

MR. WAGNER: I can't count them. Just below the middle of that paragraph on the right side.

A Yes.

Q And she wrote, "Breasts: Negative except for fibrocystic changes," correct?

A That is correct.

Q Aren't fibrocystic changes in the breast a

risk factor for breast cancer?

A To my knowledge, fibrocystic disease of the breast is not associated with an increased risk unless there is a demonstrated change on biopsy that would increase the risk.

As best I can recall, the risk for fibrocystic disease of the breast is only if there has been accompanying biopsy which shows certain changes, then which there would be an increased risk.

Q We don't know whether or not Mildred Wiley ever had such changes, do we?

A No.

Q So in and of themselves, fibrocystic changes, which are referred to here by Dr. Turner as fibrocystic changes, that would indicate to you that there is a risk for breast cancer; isn't that right?

MR. YOUNG: I will object. That's not what he said. I think that mischaracterizes his testimony.

Q Dr. Turner used the terminology. And I'm quoting it "fibrocystic changes," correct?

A Clinical fibrocystic disease, meaning you feel changes in the breast, would not be the

same as a histologic diagnosis of fibrocystic disease that was done on a biopsy. You could have the pathologic entity known as fibrocystic disease of the breast with changes that would suggest the increased risk of breast cancer and no findings on exam.

You could have clinical findings consistent with fibrocystic disease of the breast, and there would be no accompanying pathologic diagnosis.

Feeling lumps in women's breasts, I do not consider that a risk factor for breast cancer. It's a very common finding. If you find a mass, if you find other changes, yes. But I don't know what Dr. Turner's interpretation is.

But when I feel breasts that I would describe as fibrocystic, I'm saying that those are lumpy breasts. And they are treacherous because there might be something there that you couldn't find in a particular case.

Bilateral lumpiness of the breast, to me, I don't think of an increased risk of

breast cancer.

Q Is the something there that you might not be able to find, you are referring to cancer?

A That could occur.

Q And then on the second page there under "IMPRESSION," as you have already noted, Dr. Turner's impression after taking the history and examination of Mrs. Wiley on May 29, 1991 was, "Destructive lesion L2," right?

A Yes, sir.

Q And she wanted to rule out metastatic lesions, correct?

A Correct.

Q And would you say, Doctor, that another rule out would be rule out a primary lesion in the spine?

MR. YOUNG: I will object to that, same objection as I made before, asking this witness to speculate on what Dr. Turner has written. Also I know you're not finished with discussing the "IMPRESSION" section maybe, but you have only delineated one portion of the impression. And I didn't want the record to reflect that was the

entire impression.

MR. WAGNER: That's because I'm asking the questions and you're not. Go ahead, Doctor. You can answer.

A That would not be my thought in a patient of this age. A primary tumor of the bone would be a very unusual malignancy in this age group. That would be a sarcoma. An osteogenic sarcoma is seen in younger patients. It would not have occurred to me to be concerned about the primary in the lumbar vertebra.

Q How old was Mrs. Wiley when she was admitted in May of '91?

A Fifty-six.

Q And it's your opinion, Doctor, that in 56-year-old women, the possibility of a primary spinal cancer is remote?

A Yes, sir.

Q And what do you rely upon for that statement?

A In 25 years of medical practice in oncology, I don't recall ever seeing any.

MR. WAGNER: I will ask the reporter to mark this as Exhibit 28.

(Exhibit(s) 28 marked for identification.)

Q Is that a record that you have seen before, Doctor?

A Yes, sir.

Q This is a radiologist's report of a chest and skull X-ray; is that correct?

A That is correct.

Q And in the second paragraph, the radiologist reports in the last sentence of the second paragraph, "Old granulomatous scars are seen." Do you see that?

A Yes, sir.

Q What is that?

A In Indiana, that's probably histoplasmosis. It could be tuberculosis. Those would be the two.

Q Is lung scarring associated with lung cancer?

A There is a form of adenocarcinoma which is called a scar carcinoma which can begin in a scar.

Q When you were considering the etiology of Mildred Wiley's cancer, did you rule out cancer caused by lung scarring?

A I found no evidence to suggest such. She did not have a peripheral lesion. And that was evaluated to postmortem and was not found to be the case. So, yes, I ruled it out.

Q You ruled it out because, in your opinion, she had endobronchial lesions?

MR. YOUNG: I will object. That misstates what he just said.

Q Is that correct, Doctor?

A I ruled it out because a scar carcinoma is typically one at the periphery, meaning at the outlying aspects of the lungs, not the central aspects of the lungs.

And there was no evidence that that was present on any of her radiographic studies. As many as 75 percent of patients that grow up in the farm community in Indiana have positive histoplasmosis exposure. Old granulomatous scarring is seen as just a nonspecific finding.

Q Let me see if I understand. It's a nonspecific finding even though lung scarring can be associated with lung cancer?

A Two different kinds of scarring.

Q What kind of scarring is associated with lung cancer?
A Evidence scar, previous trauma, or previous damage to the lung. There is no relationship that I'm aware of with any infectious diseases with regard to histoplasmosis, tuberculosis, and the development of cancer of the lung.
Q What information do you have about the cause of the scars that are noted to be present in Mildred Wiley's lung on Exhibit 28?
A What information do I have?
Q About the cause of the scars that are indicated to be on Mildred Wiley's lungs in Exhibit 28. You can't tell by looking at this radiologist report what the cause of those scars are, can you, Doctor?
A No, sir.
Q Are you acquainted with Mildred Wiley's complete life history?
A No, sir.
Q Do you know where she worked throughout her lifetime besides the Veterans Hospital?
A That's the only work history that I had been given or that I'm aware of.

Q Doctor, isn't it fair to say that you don't know what the etiology is of the scars that are noted in Exhibit 28?

MR. YOUNG: Object to the form of the question.

MR. WAGNER: You can answer.

A That is correct.

Q And by "etiology" we mean cause, don't we, Doctor?

A Yes, sir.

Q I will show you what I'm going to ask the reporter to mark for identification as Exhibit 29.

(Exhibit(s) 29 marked for identification.)

Q While you are scanning that, Doctor, let me ask you whether or not you have seen Exhibit 29 before?

A Yes, sir.

Q It's a part of Mildred Wiley's medical record obtained during her stay at Ball Memorial Hospital?

A Yes, sir.

Q And it's a lumbar CT scan; is that correct?

A Yes, sir.

Q And you have read this before today?
A Yes, sir.
Q And tell us, first of all, what a lumbar CT scan is.
A It's a computerized axial tomogram of the lumbar spine.
Q It's something better than an X-ray, isn't it?
A Yes, sir.
Q In paragraph two, the second sentence there, let's find out who did this. Dr. Huss was the radiologist who wrote this report, right?
A Yes.
Q Do you know Dr. Huss?
A Yes, sir.
Q And is Dr. Huss a radiologist whose opinions you would value in treatment of your patients?
A Yes, sir.
Q And you would think that he would write an accurate report?
A Yes, sir.
Q And in the second sentence of his report, Exhibit 29, in the second paragraph, he

says, "There appears to be destruction of the spinoud" -- is that the right word or should that be spinal process?

A Spinous, I'm sure.

Q "Spinous process of L2 with some associated soft tissue mass surrounding the area of the spinous process." Do you see that?

A Yes, sir.

Q So he is seeing something besides the destruction of the L2 area. He is also seeing a mass there, right?

A Yes, sir.

Q Then he says, "This is symmetric. There is no calcification within the soft tissues. Etiology of this is undetermined. Concerning the patient's age, metastatic disease must be considered within the differential diagnosis. Benign and malignant primary bone tumors would be considered."

Now, Doctor, stopping right there, isn't Dr. Huss saying that bone tumors should be considered?

A That's what he is saying.

Q But you would disagree with him because of

her age; is that right?
A That would not have come to mind in my review because of age. I just have not seen primary bone tumors in this age group. It's primarily a pediatric diagnosis.
Q Do you rely upon your opinions concerning medical matters of the kind we are discussing here today only on your own experience?
A No.
Q You would rely upon what is written in authoritative text, would you not, sir?
A To be sure.
Q And what is written in authoritative articles that appear in peer-reviewed articles?
A Yes, sir.
Q Then he says, "With the lack of any calcification within it, the chance of malignant primary tumor is decreased." Do you interpret that to be a reference to the mass that he sees near the spinal column?
MR. YOUNG: I will object again, asking this witness to speculate what Dr. Huss meant.

MR. WAGNER: You can answer.
A That's the way I would read the report.
Q So he is referring to the chance of a malignant primary tumor near the spine, isn't he?
MR. YOUNG: Objection to the form of the question.
A That's what he is discussing.
Q And then in the next sentence, he says, "Plasmocytoma would also be considered," correct?
A Correct.
Q Now, I understand from my reading medical dictionaries, which is always dangerous, that plasmocytoma is a focal neoplasm of plasma cells?
A That is correct.
Q Is that correct?
A Yes, sir.
Q And neoplasma means cancer; is that right?
A Yes, sir.
Q And so how would you, as a treating physician, interpret what Dr. Huss is referring to in this sentence?
A It would be information that you would keep

in mind as you were going on and doing additional testing.

Q Where would the plasmocytoma be that he is referring to?

A You can have primary plasmocytomas of bone. You can have soft tissue plasmocytomas that can virtually appear anywhere.

Q Do you believe that you know, Doctor, what it was that destroyed the spinous process of L2 in Mildred Wiley that's indicated here?

A Do I believe I know based on this or do I have an opinion as to what caused it?

Q Any opinion as to what caused it.

A I believe this was metastatic adenocarcinoma of the lung.

Q You believe that she had metastatic adenocarcinoma that had spread to the spine and destroyed the L2 process?

A Yes, sir.

Q And how is it, Doctor, that you're able to rule out that the primary was in the spine and metastasized to the lungs?

A Well, we have a diagnosis of adenocarcinoma of the lung. So if this is not an adenocarcinoma, then there would have to be

some other synchronous malignancy. And I don't have any reason to think that was the case.

Q How is it you're able to rule out a primary adenocarcinoma of the spine which metastasized to the lung in Mildred Wiley?

A Never seen it.

Q Because you have never seen it, you're able to rule it out?

A I don't know of any organs in that area that would generate a primary adenocarcinoma.

(Exhibit(s) 30 marked for identification.)

Q Doctor, I will show you what the reporter has marked for identification as Exhibit 30 and ask you whether or not you recognize that as a report of a Dr. Koch, K-O-C-H, radiologist, relating to a bone imaging of Mildred Wiley?

A Yes, sir.

Q What is the purpose of bone imaging?

A In this case, it would be to look for other sites of spread, if you have a pattern of multiple sites spread, to see if this same process could be going on in other

locations.

Q And, in general, what does this report indicate in that respect?

A That there were several areas of increased uptake.

Q And when the radiologist noted several areas of increased uptake, uptake of what?

A The isotope, the 99M Technetium radioisotope.

Q And what is the significance of that uptake in a particular area of the body?

A It requires new bone growth in order to take up the isotope.

Q And what is the significance of that?

A That the body is trying to repair itself.

Q What is the relationship of those facts, if you will, to cancer?

A Quite often in the case of a malignancy that's gone to the bone, the body tries to repair itself, and it will take up the isotope.

Q Now, in how many areas in Mildred Wiley's skeleton were there uptakes? There were quite a few here, weren't there?

A Multiple.

Q What does that indicate to you? That her cancer was pretty well widespread?
A If it's due to cancer.
Q Could it have been due to anything else?
A Nothing else comes to mind.
Q In your opinion, would these bone images that are on Exhibit 30 on May 30, 1991, indicate that she was suffering from advanced cancer at that time?
A Presuming this is all due to cancer, yes.
Q And in your opinion, it's not due to anything else; is that correct?
A That is correct.
Q And when Dr. Patel "bronched" her a few short weeks before May 13, 1991, he didn't find and the washings didn't find the presence of any cancer, correct?
MR. YOUNG: I will object to the extent you are asking him outside of the records that have been presented.
A He did not establish a diagnosis of cancer in the bronchoscopy.
Q Is there such a thing, Doctor, as primary bone cancer?
A Yes, sir.

Q And isn't it possible that Mildred Wiley had primary bone cancer?

MR. YOUNG: I will object as to possibilities and the form of the question.

A It is possible that she had a primary bone cancer.

Q So you're unable to rule that out, aren't you, Doctor?

MR. YOUNG: I will object. That misstates his testimony. It's a leading question. Object to the form.

Q The question is, Doctor, you, as a practicing physician and knowing Mildred Wiley's records and having treated her, it's a correct statement, isn't it, Doctor, that you are unable to rule out that she had a primary bone cancer?

MR. YOUNG: Same objection.

A I can rule out that she did not have a primary bone cancer causing the sites that we biopsied and confirmed metastatic disease. I could not rule out a synchronous second malignancy that you are calling the primary bone tumor.

Q When you say "the sites that we biopsied and

confirmed," what are you referring to?

A Chest wall, lung, autopsy.

Q Doctor, isn't it possible that Mildred Wiley had a primary bone cancer that metastasized to her lungs?

A It's the wrong type of cancer. Adenocarcinoma is the wrong kind of cancer to start out as a primary bone tumor. Bone suggests consecutive tissue. Then we're talking sarcomas. When you're talking connective tissues, you're talking sarcomas -- osteosarcoma, chondrosarcoma, osteogenic sarcomas. Those are sarcomas. Those don't look like adenocarcinomas.

Q So, in your opinion, she could not have had a primary adenocarcinoma of the bone?

A I have not seen it.

Q Not seen it. Not ever read about it?

A I don't recall reading about it.

MR. WAGNER: Mark this as Exhibit 31.

(Exhibit(s) 31 marked for identification.)

Q Do you recognize Exhibit 31, Dr. Songer, as a copy of a radiologic examination written

by Dr. Koch on May 31, 1991, relating to the right and left femur, right shoulder, left leg of Mildred Wiley?

A Yes, sir.

Q He noted there in the first paragraph, did he not, that, "There is an area of bone destruction measuring approximately 4 cm. in length and 1 cm. in left in the mid shaft of the right femur"?

A Yes, sir.

Q That would indicate to you also, wouldn't it, Doctor, that the cancer that she had destroyed that bone?

MR. YOUNG: Object to the form of the question.

MR. WAGNER: You can answer.

A That would be one explanation for sure.

Q Do you know of any other? If you read the next sentence there, it says, "This is in the region of one of the areas of the increased uptake of the MDP on bone images of May 30, 1991."

A The bone scan means there is repair. You could argue this could be, again, a coincidental benign process.

Q What do you think it is in your opinion?
A I think it's a metastatic disease from adenocarcinoma of the lung.
Q You're able, again, to rule out completely that she had a primary from some other source other than the lung; is that right?
MR. YOUNG: That has been asked and answered many, many times.
A I have concluded that there is no other explanation for all that I have found on review of her case; that it's metastatic adenocarcinoma of the lung.
MR. WAGNER: Mark these as Exhibits 32 and 33.
(Exhibit(s) 32 & 33 marked for identification.)
Q You recognize Exhibits 32 and 33 as documents that pertain to Mildred Wiley's treatment at Ball Memorial Hospital?
A I've never seen this one before as a part of the chart.
Q By "this one," you mean Exhibit 32?
A Exhibit 32. I'm not familiar with this as a part of the chart that we generate when a patient is admitted, but there's nothing

there that isn't true.

I don't know where this came from. It says Muncie Surgical Associates down here. I would suspect this is some of Dr. Sprunger's paperwork from his office.

Q Well, you're aware, are you not, Doctor, that Dr. Sprunger excised a left chest wall mass of Mildred Wiley?

A Yes, sir.

Q And do you know when that was done?

A 6-1-90.

Q It was done on June 1, 1991, wasn't it?

A '91, yes, sir.

Q Now, where was that mass?

A At the time I saw the patient, it had already been removed; but I describe a scar somewhere in the front of the chest.

Q And what position on the chest was it? Left side?

A I do not recall. It says here left chest wall mass.

Q So at least according to Dr. Sprunger's reports here, it was on the left chest, right?

A That is correct; it was on the left chest.

Q And do you know who discovered this left chest mass?
A I believe that Dr. Turner found it on her initial physical exam. I don't believe Dr. Scott Walker mentioned it in his exam.
Q We didn't see any reference to a left chest wall mass in either Dr. Turner's report or Dr. Walker's report, did we, Doctor?
A Could I review?
Q Sure, absolutely, if you have to.
A It's in the physical exam, Exhibit 14.
Q You are referring to Dr. Turner's Exhibit 14?
A Yes.
Q Dr. Turner's consultation?
A Yes.
Q And what is it she says about that?
A She has a small, very tender, approximately one-half centimeter irregular nodule just below the left xiphoid process.
Q That would be the same as this mass that Dr. Sprunger excised; is that right?
A That's my presumption.
Q Looking at Exhibit 32, you see there's a handwritten note there that says, "Sent note

and copies to Mr. Wiley, 8-19-91." Do you know whose writing that is?

A No, sir.

Q Looking at Exhibit 33, down in the lower left-hand corner, do you see it says dictated by K.W. Sprunger, M.D., June 25, '91; June 27, '91. Do you know why this dictation took place so long after the actual excision?

A No, I don't.

Q Now, that chest wall mass that was excised by Dr. Sprunger, tissue from that mass was examined by a pathologist; is that correct, at Ball Memorial?

A That is correct.

Q I will show you what I will ask the reporter to mark as Exhibit 34.

(Exhibit(s) 34 marked for identification.)

Q Do you recognize Exhibit 34 as the pathologist's report on the tissue specimen that was examined, taken from the chest wall mass and excised by Dr. Sprunger?

A Yes, sir.

Q You have seen that before today, haven't

you?

A Right.

Q And the pathological diagnosis was what?

A Poorly differentiated adenocarcinoma. carcinoma

Q The pathologist didn't diagnose that specimen as adenocarcinoma, did he?

A No, sir.

Q You see the microscopic section there, Doctor, right in the middle of the page?

A Yes, sir.

Q The very last sentence says, "A mucin stain is negative."

A Yes, sir.

Q What is the significance of that?

A A mucin stain could move the pathologist toward the diagnosis of an adenocarcinoma if it were positive.

Q But in this case it was negative, wasn't it?

A Yes, sir.

Q And so as of June 1, 1991, when this chest wall mass was examined by the pathologist, there is no diagnosis of adenocarcinoma, is there?

MR. YOUNG: I will object. You're asking him to go outside the bounds of what

the report is there and speculate as to what the pathologist is diagnosing or not diagnosing.

Q You can answer. That's a correct statement, isn't it?

MR. YOUNG: I will object to the form of that question.

A As of receipt of the chest wall biopsy report, 6-1-91, this did not establish a diagnosis of adenocarcinoma.

(Exhibit(s) 35 marked for identification.)

Q I show you what the reporter has marked for identification as Exhibit 35, Doctor. Do you recognize that as a report of a CT scan of Mrs. Wiley's abdomen and pelvis and a CT of her chest on June 3, 1991?

A Yes, sir.

Q Now, in the fourth paragraph, just below or about the middle of that paragraph, do you see the sentence that starts out, "There is also a moderate sized..."? Do you see that?

A Yes.

Q "...moderate sized right hilar mass which causes obstruction of a right middle lobe

bronchus"?

A Yes, sir.

Q What he is noting there is that there is a mass that is obstructing the right middle lobe bronchus, right?

A Yes, sir.

Q And then skip the next sentence. He also states, "There is also narrowing of the right lower lobe bronchus but it is minimal." Do you see that?

A Yes, sir.

Q And then in the last sentence there on that page, it's reported that, "The pancreas is difficult to identify but is not enlarged." So all they could tell was that it was not enlarged, right?

A True.

Q And then on the next page, in the third paragraph there, he noted, "A destructive lesion involving a spinous process (L2 on CT CAM of 5-21-91) with some soft tissue mass consistent with metastases." Again, that's a reference, isn't it, to the mass that was seen earlier adjacent to the spine?

A Except is that the right date? She wasn't

yet admitted on 5-21. I think it's the wrong date.

Q Probably the wrong date. I think maybe we can agree on that. But other than that, that's a reference to what I just said, right?

A Well, actually he changes the date down here on 4, 5-29. Yes, sir.

Q I will show you what I will ask the court reporter to mark as Exhibit 36.

(Exhibit(s) 36 marked for identification.)

Q What is Exhibit 36, Doctor?

A It's a copy of my dictated consultation.

Q And that was dictated as a result of your seeing Mildred Wiley on June 3, 1991?

A That is correct.

Q I want to ask you several questions about this document, Doctor. First of all, in the upper right-hand corner, there are indications of whom you sent copies of this to, correct?

A Yes, sir.

Q And you sent a copy to Dr. Patel, did you not?

A Yes, sir.
Q And I note you did not send a copy to Dr. Turner. Is there some reason for that?
A Killing more trees.
Q By that answer, you mean she gets a copy kind of automatically as a result of your sharing of records and all that we talked about earlier; is that right?
A Yes, sir, that would be my supposition.
Q Is that also your practice?
A True. Although, I'm not sure that she isn't included over here to the side.
Q I think you're right. I have to correct my question. I see her name now off to the left, isn't it, Dr. Turner or N.C. Turner? So apparently you did send her a copy?
A Yes, killing more trees than I planned.
Q You noted in the second paragraph of this document on the first page that the patient is a nonsmoker, correct?
A Correct.
Q And is that a question you typically ask?
A Yes, sir.
Q And there isn't any reference in this report to Mildred Wiley being around smokers or

passive smoke, is there?

A That is correct.

Q And that's because you don't routinely ask your patients about that subject, do you?

MR. YOUNG: I will object to the form of that question.

A I would rarely ask environmental history of a patient.

Q Sir, I'm not sure you answered my question. You don't routinely ask your patients about whether or not they are exposed to secondhand smoke; isn't that a correct statement?

A That is true.

Q Now, when you wrote this report on June 3, 1991, the very first sentence there in the first paragraph is a reference to, "Mildred Wiley is a 56 year old Caucasian female for whom consultation was requested regarding suspected bronchogenic malignancy with bony skeletal involvement" and so forth.

What was it at that point in time that indicated in any of these medical records that we have seen up to this point that she had a bronchogenic malignancy?

MR. YOUNG: I will object to you limiting your question to the medical records that we have seen here today. There may be other medical records or other clinical findings or examinations he might have made at the time that would lead to that. So I think your question is narrow, improperly narrow.

MR. WAGNER: I think your objections are objectionable because you are coaching the witness, telling him, giving him hints on how to answer questions. And I would appreciate it very much if you didn't impede the course of the examination by those kind of objections and that you not coach the witness.

MR. YOUNG: I will state for the record --

MR. WAGNER: You can state whatever you want.

MR. YOUNG: That's right. I'm going to --

MR. WAGNER: Go ahead, Doctor.

MR. YOUNG: -- if you don't interrupt me. The point is I'm entitled to

make objections. I'm not coaching this expert medical doctor. I'm not a doctor. I'm trying to keep you from making questions that are objectionable and stating the basis and reason for them. And I will continue to do so.

Q You can answer the question, Doctor.

A Would you ask it again?

Q With reference to the first sentence of Exhibit 36, where you state, "...for whom consultation was requested regarding suspected bronchogenic malignancy," what is there that we have looked at in the medical records up to this point or what do you recall, if it's not in the records we have looked at up to this point, that indicated a bronchogenic malignancy in Mildred Wiley?

A At the end of my dictation, I discuss the X-ray findings.

Q Are you on page 3?

A Yes. And the chest X-ray is very typical of what you see: Right hilar mass, distal opacification of the right upper and middle lobes. That suggests something is blocking the airflow into those two lobes. We've got

what appears to be widespread bony metastatic disease to the bony skeleton. We have at that point suspicion of spread to the chest wall.

I don't believe that I had access to that report yet when I did my consultation. And it's a case that it's just a very typical presentation that you expect to see with a bronchogenic carcinoma, what appears to be central malignancy blocking off two areas of the right lung, spread to the chest wall and to the bony skeleton.

We're talking about a very common malignancy in a very common presentation.

Q All those abnormalities that you just have been describing to me, Doctor, in the lung areas could have been caused by metastatic disease; isn't that true?

A You're going to have to speculate metastatic disease to the bronchus shutting these off, which is extremely rare.

Q She had very advanced cancer at the time that she was admitted to Ball Memorial Hospital, didn't she?

A True.

Q I mean, we have already noted that, haven't we?
A True.
Q So she had very advanced cancer. And if she had a primary of the pancreas or primary from some other organ that had metastasized to her lung, all that could have happened; isn't that correct?
MR. YOUNG: I will object. That's a compound question. I will object to the form.
A Would you ask me the question again?
Q If she had a primary pancreatic cancer or a primary in some other organ that was as advanced as her cancer was, as we have seen in these medical records when she was admitted to Ball Memorial Hospital, all these abnormalities in her lung could have been the result of metastatic cancer; isn't that correct?
A It didn't fit for metastatic cancer.
Q It doesn't fit why?
A We are -- and this is just the very first day I have seen her. There's a lot of evidence yet to be discovered that we'll

argue.

But when I look at this kind of chest X-ray report -- and you asked me why I made the comment that it was suspected bronchogenic malignancy -- this is the rationale: That we're talking about something that involved the airway. And so you're going to have to find a malignancy that typically goes to the airway to block off two lobes that fits with the rest of the pattern.

And so I would stand on my supposition that this was suspected bronchogenic malignancy for those reasons.

Q The only bronchoscopy that we have up to this point in time was performed by Dr. Patel; isn't that right?

A That's true.

Q And that was done a few short weeks before you saw her?

A I believe we decided four weeks, in that range.

Q And he didn't find any bronchogenic cancer, did he?

MR. YOUNG: I will object. Again,

if you are going to limit it to the exhibits that have been reviewed, that's fine. But what other findings he made outside of that --

A He did not diagnose malignancy.

Q And he didn't see any in the bronchoscope either, did he?

A He didn't see a lesion extending into the airway.

Q And on pathological examination of his washings, there was no indication of any malignancy, correct?

A That's correct.

Q And in the fourth paragraph of Exhibit 36, Doctor, you refer to Dr. Patel's bronchoscopy and findings, correct?

A That is correct.

Q Where did you get that information?

A I don't know.

Q You make a specific reference there to a finding of hyperemia that was noted by Dr. Patel. Could you have gotten that from any source other than Dr. Patel's bronchoscopy report?

A I could have gotten it from Dr. Turner's

dictation.

Q Is it typical for you to rely upon another doctor's report for information?

A Yes, sir.

Q Do you know whether or not Dr. Turner saw Dr. Patel's bronchoscopy report?

A No, I don't know.

Q On the second page, Doctor, of Exhibit 36, in the third paragraph, you note that she "did not breast-feed," correct?

A Yes, sir.

Q And is it accurate to state, Doctor, that the reason that you noted she did not breast feed, you noted that because not breast feeding is a risk factor for breast cancer?

A I would say that at that time, there was reason to think that breast feeding might be a factor that would reduce the risk of breast cancer. I would stop short of saying that not breast feeding is a risk for breast cancer.

Q Let's see if I got that straight. Breast feeding reduces the risk of breast cancer, correct? Is that what you just told me?

MR. YOUNG: Why don't you read his

answer back.

MR. WAGNER: No, I don't want to read the answer back. I'm asking the questions here.

MR. YOUNG: I think it's improper for you to restate it.

Q Is that what you are indicating to me, Doctor, that breast feeding is a risk or reduces the risk of breast cancer?

MR. YOUNG: I will object. It's been asked and answered.

A You asked if absence of breast feeding was a risk factor for breast cancer. Having breasts is a risk for having breast cancer. If you breast feed, you may be able to reduce that risk.

I would not turn that around and say that not breast feeding raises your risk. You've got certain intrinsic risks of getting breast cancer. At that time there was some belief if you breast fed, you could reduce that. Maybe that's the same answer, but it doesn't mean the same to me.

Q You noted in the second paragraph on the second page of this document that she had

lost 12 to 15 pounds over the past month, right?

A Yes.

Q And then in the physical exam in the second line, you noted that her admitting height was 5 feet 4 inches and her weight was 132, right?

A Yes, sir.

Q So before she lost those 12 or 15 pounds, she would have been overweight for her age and height? Would you say that's so?

A My generic thought about 5 feet 4 inches and 144 would be pretty average. I guess I would not have considered her to be overweight.

Q Now, in the fourth line, Doctor, of the "REVIEW OF SYSTEMS," the last paragraph on page 2, you wrote or dictated, "Breast negative except for slight lumpiness consistent with fibrocystic changes." Do you see that?

A Yes, sir.

MR. YOUNG: Sorry, I'm not with you.

MR. WAGNER: Fourth from the last

line on page 2. Are you with us?

MR. YOUNG: I'm with you.

BY MR. WAGNER:

Q Do fibrocystic changes cause lumpiness?

A Yes, they can appear as lumpiness of the breast. As I said earlier, it's not mutually exclusive. Fibrocystic disease is either a pathologic diagnosis or mammographic diagnosis, not a physical exam diagnosis.

Q When you saw Mildred Wiley on June 3, 1991, Doctor, and based on everything that you can recall regarding her treatment and the documents we have looked at up to this point in time, were you able to rule out that she had a primary breast cancer?

A On June 3rd?

Q Yes, sir.

A No, sir.

Q Looking now at the third page, Doctor -- by the way, when you saw Mildred Wiley on June 3, 1991, had you seen Dr. Turner's report of her first meeting with and examination of Mildred Wiley?

MR. YOUNG: Excuse me, has that

been made an exhibit?

MR. WAGNER: I'm not sure. I'm looking for it.

MR. YOUNG: Exhibit 27?

MR. WAGNER: Yes, Exhibit 27.

A You're asking if I had read Dr. Turner's consultation?

Q Yes, Exhibit 27. It was dated May 29, 1991; and you saw Mildred Wiley on June 3, 1991.

A I don't remember, and I don't know.

Q Wouldn't it typically be your practice, Doctor, to read the entire medical chart that existed about a patient --

A Yes, sir.

Q -- that preexisted the time you see the patient? You have to answer out loud.

A Yes, sir.

Q So is it more likely than not, do you believe, that you would have read Exhibit 27 when you saw Mildred Wiley for the first time on June 3, 1991?

A If it were on the chart, I would say I would have read it. The dates are such that, for example, if you look at the length of time it took to get her report back on the chest

wall biopsy, several days went by. I would just simply say that if it was on the chart, I would likely have read it. But I have no firsthand knowledge if it was on the chart.

Q You have Exhibit 27 in front of you?

A Yes, sir.

Q If you look at the last page, it says that Dr. Turner dictated it on May 30, 1991. And I believe the May 31, 1991 date indicates the date it was typed, correct?

A Yes, sir, that's what I believe.

Q And so it was in existence at the time you saw Mildred Wiley on June 3, 1991?

A There is every reason to believe that it had been typed by the time I saw her.

Q And there is every reason to believe you would have read it before you saw or contemporaneous with the time you saw Mildred Wiley for the first time, correct?

A I usually prefer to see the patient in consultation and get my own history and then read pertinent other information.

Q In this case, you don't remember whether you read Dr. Turner's report or not; is that correct?

A No, sir.

Q Doctor, in the "IMPRESSION" section of your consult report, Exhibit 36, you wrote or dictated, "Metastatic malignancy to bone with abnormal chest X-ray -- probable nontobacco related bronchogenic carcinoma." Do you see that?

A Yes, sir.

Q And you keep up with reading, don't you, Doctor, about lung cancer and nonsmokers?

MR. YOUNG: I will object to the form of the question.

A Earlier in the deposition, you asked me when I had read about passive smoke. And I mentioned recently. I don't typically read about it.

Q But you had some awareness, when you saw Mildred Wiley in the first part of June of 1991, about a possible link between environmental tobacco smoke and lung cancer?

A. My supposition is that I was not unaware of that possibility; that there are environmental factors that can enter into that diagnosis, yes.

Q . And being aware of that possibility, you

wrote, "...probable nontobacco related bronchogenic carcinoma," correct?

A I dictated that into the microphone.

Q Do you recall discussing Mildred Wiley's case with Nicki Turner, Dr. Turner, before you saw Mildred Wiley on June 3, 1991?

A I have no recollection as to whether I did or not.

(Exhibit(s) 37 marked for identification.)

Q Do you recognize Exhibit 37, Doctor?

A Yes, sir.

Q What is it?

A It's a progress note, what we call a progress record of Mildred Wiley's hospitalization at Ball Memorial Hospital.

Q And it has your handwriting on it?

A Yes.

Q Under the date of June 5?

A Yes, sir.

Q And we know that to be June 5, 1991, don't we, sir?

A Yes, sir.

Q And can you read what you wrote there?

A Yes, sir.

Q Would you, please?
A I spoke to Dr. D. Weaver regarding the biopsy. His differential includes a poorly differentiated squamous cell carcinoma of the lung and breast cancer; lymphoma is not a possibility. Patient not able to have repeat mammogram at this time. Recommend radiotherapy, second lumbar area.
Q Just so I'm clear, what Dr. Weaver said was a differential included a poorly differentiated squamous cell; is that right?
A Poorly differentiated squamous cell cancer of the lung, or CA lung, and breast cancer.
Q And then is that your handwriting in the upper right-hand column?
A Yes, sir.
Q And it says 6/5 CEA and then CA 15-3, correct?
A Yes, sir.
Q And what are those?
A Serum tumor markers for malignancy.
Q What kind of malignancy?
A CEA is a nonspecific tumor marker that cuts across several tumor types. I believe initially colon cancer was thought perhaps

to be a specific marker for CEA.

As it turns out, it's a more nonspecific marker for a number of malignancies. And these would include colon cancer, lung cancer, breast cancer, a number of the gynecologic malignancies.

Q What is CA 15-3?

A CA 15-3 was a tumor marker for breast cancer that we had not been doing, as I remember, very long at that time. And, again, it was a test that was developed in the hope that it would be specific for breast cancer and could help you with a diagnosis in a situation where you don't know where cancer starts.

Q Is it accurate to say, Doctor, you ordered the CA 15-3 test for Mildred Wiley because you were concerned she had breast cancer?

A I had a pathologist that had listed breast cancer as a possibility in his differential of the chest wall biopsy.

Q So is the answer to my question "yes"?

A The answer is "yes."

Q Did you order the CEA test for Mildred Wiley because you were concerned that she had a

primary cancer in some organ outside the lung?

MR. YOUNG: I will object to the question as vague and confusing.

A I'm not sure why I ordered a CEA. It's a common test you get that could point toward an adenocarcinoma in a case where the only diagnosis we had up to that time was a poorly differentiated carcinoma.

CEA, if elevated, would in my opinion point you more toward an adenocarcinoma. And the only other differential here that was listed that had any potential for having a marker was breast cancer.

So I don't really go into a lot of detail as to why I did it, but that would be my supposition as to why I ordered both of them.

Q Who is Dr. Weaver?

A He was on our pathology staff at that time.

Q Do you respect his opinions?

A Yes, sir.

Q And the reason that you consulted Dr. Weaver on or about June 5, 1991, was because you wanted his opinions about what kind of

cancer Mildred Wiley was suffering from, right?

A If he had enough tissue, if he was in a position to tell us enough information that we could decide where it was starting or what subtype within an organ.

Q And based upon all the information you had up to this point in time on June 5, 1991, and after talking to Dr. Weaver, you were concerned that she had a primary breast cancer, correct?

MR. YOUNG: I will object to the form of the question.

A I would not say that I was concerned she had a breast cancer. I was looking for more information that might give us a direction in terms of treatment.

Q Well, you treated her for breast cancer, did you not?

A That is correct.

Q So you were concerned enough about the possibilities she had breast cancer that you treated her for it?

A Not based on this.

Q But later on that's what you did, did you

not, Doctor?

MR. YOUNG: I will object to the form of the question. It's argumentative as well.

A I made an empiric decision to treat her for the only thing I thought we had a chance to help her with at that point, given the fact that the CA 15-3 was elevated and the CEA was elevated.

Q Let's look at the records that pertain to the subject, Doctor. Let me ask the reporter to mark for identification Exhibit 38.

(Exhibit(s) 38 marked for identification.)

Q What is Exhibit 38?

A It's a report of the CA 15-3 which I requested.

Q For Mildred Wiley?

A For Mildred E. Wiley.

Q And what are the results?

A 100 units per mil. And a normal is less than 25.

Q Is it accurate to say, Doctor, she had an extremely elevated CA 15-3?

A No, it's not a particularly high level for somebody with as much metastatic disease as she had.

Q Well, normal is less than 25?

A Normal is less than 25.

Q So she has 100?

A It's elevated. You asked me if it was, I believe -- what was the word?

MR. YOUNG: Extremely.

Q Let me rephrase the question. She had a high-compared-to-normal CA 15-3?

A Yes, sir.

Q Correct?

A Yes, sir. I'm just saying based on experience with that during that time, 100 is not particularly high. It's elevated, but it's not particularly high relative to all the disease that she had.

MR. YOUNG: I don't want to cut in in a bad place, would this be a good time to take a little break?

MR. WAGNER: Sure.

(A brief recess was taken.)

Q Doctor, referring to Exhibit 38 for just a moment, can you interpret for me what the

significance of these columns are?

A What that is assessing is with any tumor marker such as CA 15-3, with all these that come along, you're hoping to get a specific marker where that someone without cancer would not have an elevation; people with other types of cancer would not have an elevation.

Typically what they do is they give you the normal controls across here. They say they have looked at 1,050 patients, and they found that 5.5 percent were greater than 25. So 95 percent would be in the normal range. 0.09 percent would be greater than 40.

Then they usually list, such as this case, the tumor type that they marketed this to be specific for. And they go breast cancer, metastatic overall.

In other words, you have someone with metastatic breast cancer. You had 158 patients. 69 percent of them were greater than 25. 52 percent of them were greater than 40. Local disease only would mean if you showed up with a breast cancer. It would be like hoping that it might be as

good as, say, a prostate marker where you come in and get your PSA and it's normal. You can go home and celebrate.

So they look at like local only meaning that you only have either disease limited to breast or maybe just localized, okay? In other words, very limited spread.

They had 26 patients. 46 percent of them had above 25. 23 percent of them had above 40. Then they looked at patients that only had bone disease, et cetera, et cetera.

Q I think I have got it.

A The only other one they listed at that time as far as malignancies, they listed gynecologic malignancies. They had ten patients. Two of them had greater than 25. Two of them had greater than 40. And then they always list some benign conditions.

Q I think I understand. You mentioned the CEA test as being a marker for various kinds of cancers, correct?

A Well, what we would call generally speaking adenocarcinomas, in other words, glandular malignancies. And clearly it is not a specific marker. But if you have an

established diagnosis, it can be helpful in monitoring that disease.

The hope with CA 15-3 was -- and at that time, we were still hopeful -- it was going to be a good marker, a consistent marker, a specific marker for breast cancer.

Q And is the CEA test also a marker for pancreatic cancer?

A Could be. That would be one of the long list that you would put down for pancreatic.

(Exhibit(s) 39 marked for identification.)

Q Doctor, is Exhibit 39 the lab test result for the CEA test that you ordered for Mildred Wiley?

A Yes, sir.

Q And the result is down in the lower portion that says 7.9; is that correct?

A Yes, sir.

Q And is that elevated?

A That is usually 0 to 3. I don't know if they have the normals here. That is elevated.

Q Because the normal is generally 0 to 3, correct?

A That's what it would be today. They haven't changed it in the last six years.

(Exhibit(s) 40 marked for identification.)

Q Do you recognize Exhibit 40 as a copy of part of the progress notes relating to Mildred Wiley?

A Yes, sir.

Q It has your handwriting on it; is that correct?

A Yes, sir.

Q And can you read what you have written here?

A Yes, sir: Onc, CEA 7.9 nanograms, CA 15-3, 100 units.

Q I don't mean to interrupt, but that's the reference to what we have already seen as a result of the lab reports?

A That's the results of those two tests. Bronchial biopsy, nondiagnostic.

Q What bronchial biopsy is that referring to?

A That would have been Dr. Turner's series of examinations that she did at the bronchoscopy.

Q Which we haven't put into the record at this point. But that's a reference to

Dr. Turner's bronchial washings; is that right?

A Washings, brushings, and biopsy.

Q Go ahead.

A Although breast primary seems unlikely, I see no contraindication to treating patient empirically with antihormone therapy based on a high CEA and CA 15-3.

Q And then in the upper right-hand column, is that your handwriting there, opposite the date of June 10?

A Yes, sir.

Q And what is that?

A It reads, "Tamoxifen citrate, 10 milligrams, BID."

Q What is that?

A That's an antihormone therapy that's used in treating breast cancer.

Q So, Doctor, up to this point in time on June 10, 1991, you began treating Mildred Wiley for breast cancer?

A I started her empirically on what I thought was the only cancer that we had any chance of helping at that point in time.

Q And the reason you did that is because there

was a probability that she had breast cancer?

MR. YOUNG: I will object to that, to the form of the question. It's argumentative.

A I would say there's a possibility at that point that she had breast cancer. I say here it's unlikely that she has breast cancer.

Q You say it seems unlikely, right?

A Right. You will recall that earlier I had made note of the fact that this lady could not go down for mammogram. We had very few options to try to help her, such as chemotherapy. She would not have been a candidate for actual systemic chemotherapy.

If you rule that out of a patient, then there's a fairly short list of things that you can treat without chemotherapy when the disease has spread this far. It would boil down to basically breast cancer in women and hormone therapy and prostate cancer in men and antigen therapy.

At that point, I had a serum tumor marker that I thought was specific for

breast cancer. And it was either let her die -- that very day she was made a no code. It was either let her die doing nothing or try something, however unlikely that it might be that or however likely it might be that. And so that was my rationale as I interpret that.

Q You don't normally treat patients for something about which there's no possibility that they have, do you, Doctor?

A I would not ordinarily treat a patient for which I felt there was no possibility that they had that diagnosis.

Q And so you felt there was a possibility on June 10 of 1991 that Mildred Wiley had breast cancer, correct?

A At that time, I felt that was a possibility.

Q Now, also on this Exhibit 40, under the date of June 10, there's a note. Do you know whose handwriting that is?

A It's Dr. Nicki Turner's.

Q Can you read that for us? And I realize it's a little dim. But can you read that?

A Cytologies still pending from bronch.

Q That would be the bronch she performed?

A Yes, sir. Increased pain, blank increase morphine sulfate -- oh, have increased morphine sulfate. Increased pain, have increased morphine sulfate. There is no way this patient can be managed at home at this point. Family requests no code.

Q What does "no code" mean?

A If her respirations cease or if her heart stops, she will not be brought back to life, nor will there be an attempt to do so.

(Exhibit(s) 41 marked for identification.)

Q You have seen Exhibit 41 before, have you not, Doctor?

A Yes, sir.

Q This is a copy of the bronchoscopy procedure performed by Dr. Turner on Mildred Wiley?

A Yes, sir.

Q And this was performed on what date?

A 6-6-91.

Q June 6, 1991. I want to walk through this, Doctor. First of all, I notice that I think correctly this time in the upper right-hand corner, I don't see your name as being part of the copying process.

A That's true.
Q So this would have been something you could have seen as a result of your record sharing with Dr. Turner; is that correct?
A Right.
Q And in the second full sentence, first paragraph, it says, "A myelogram revealed significant necrosis of the L2 pedicle."
The L2 pedicle is in the spine, correct?
A Right.
Q What is necrosis?
A Dead, dying tissue. Just another thing for an autopsy is a necropsy. The word "necrosis" means death.
Q Beginning in the third paragraph, she describes the bronchoscopy procedure that she performed on Mildred Wiley, correct?
A Yes, sir.
Q And she talks about starting on the left side first, right?
A That is correct.
Q And in the third paragraph there, she's describing what she sees through the bronchoscope and then continues to do that

into the fourth paragraph, correct?
A That is correct.
Q What she is talking about in the fourth paragraph at the beginning is what she is visualizing in the left side of Mildred Wiley's chest, right?
A Right.
Q And there in the third sentence, she says, "The left upper, lower, and lingular segments were inspected carefully. All segments were patent and appeared normal." She is talking about the left chest, right?
A Right.
Q And she said, "The bronchoscope was then withdrawn and reinserted into the right main stem." She is now going into the right bronchus, right?
A Right.
Q Upon entering the right upper lobe segments, marked mucosal mounding was noted. What is mucosal mounding?
A Elevation, raised tissue in an area where it should have been flat.
Q And in the next sentence, she says, "No evidence of endobronchial lesions were

noted, however, with insertion of the bronchoscope into the bronchus intermedius, right?
A Right.
Q She is telling whoever wants to read this report that she's not seeing an endobronchial lesion, correct?
A To that point.
Q And an endobronchial lesion means a lesion inside the bronchus, correct?
A Correct.
Q And then she says in the next sentence, "There was total occlusion of the airway with tumor and mucosal edema," right?
A Yes, sir.
Q And she then describes how biopsies were obtained, multiple brushings were obtained and notes, "Additional biopsies were not possible secondary to malfunction of the bronchoscope when a large mucus plug occluded partially the lumen," correct?
A Correct.
Q What is the lumen?
A The opening of the scope. Wait a minute.
Q Is she referring to the lumen in the scope

or the lumen in the bronchial tube?

A That's a good question. It plugged the lumen.

Q Well, whichever one it was, it occluded the bronchoscope, right?

A Right.

Q And then in the "IMPRESSION" section, she notes in paragraph 1, "Primary neoplastic process right main stem with total occlusion of the bronchus intermedius and obstruction of the middle and lower lobe segments," correct?

A Correct.

Q Now, Doctor, from what we have reviewed up to this point, it's clear, isn't it, that she never got the bronchoscope into the bronchial tubes?

A She was not able to get below the bronchus intermedius it appears because it was completely occluded.

Q Right. Doctor, it's clear that she is saying no evidence of endobronchial lesions were noted, right?

A That would be referring to the area between the bronchus intermedius and the right main

stem. That would be the area between the right main stem, the right upper lobe bronchus comes of. Then you get to the bronchus intermedius, which is the rest of the way down.

She would have been describing the fact that between the right main stem and the bronchus intermedius, there was no evidence of endobronchial lesion.

Q And, in fact, she makes no note in this report at all of having observed any endobronchial lesions anyplace, correct?

A Well, until she gets to total occlusion of the airway. That's by definition complete obstruction of the airway. Total occlusion is by definition a closing over.

Q But the airway was closed so she couldn't get the bronchoscope in the airway, right?

A She could not get the bronchoscope past the bronchus intermedius because it was occluded.

Q All right. But because it was occluded, it was occluded before she got there with the bronchoscope I guess is my point. And she can't see into the lumen or the opening of

the bronchus, right?

A She could not have seen past -- when she got past the right upper lobe, everything else was blocked off. So she could not have gotten to the right middle lobe or right lower lobe bronchus because it was occluded.

Q Now, in the "IMPRESSION" section, she notes in paragraph 3 -- I think I'm pronouncing this correctly, but you correct me if I am wrong. It's Kwashiorkor --

A Kwashiorkor.

Q -- malnutrition. What is that?

A Dr. Turner is also Board certified in clinical nutrition. That is a degree of malnutrition that I can't really tell you what the categories are. But that's significant malnutrition.

Q Why would that be in a bronchoscopy report?

A Because she's a clinical nutrition doctor.

Q It's not anything she saw as a result of using the bronchoscope, is it?

A No.

Q Does she typically make such notations in your experience?

A You mean, like Kwashiorkor malnutrition?

Q Right, in a report of a bronchoscopy procedure.

MR. YOUNG: I will object to the extent it asks him to speculate about what Dr. Turner does or doesn't do on a bronchoscopy report.

A She did it on the discharge summary. She is talking about the bronchoscopy. And then she says that the patient is on the Duragesic patch. And then she keeps going on describing the bronchoscopic findings.

Q Those are the two occasions when you have seen it?

A Those are the only two I have had occasion to observe it. I mean, I don't typically read with that idea in mind, you know, of trying to see.

Q Now, Doctor, isn't it accurate to state that there is nothing in Exhibit 41 that could indicate that she, Mildred Wiley, had a bronchogenic tumor?

A On the contrary, it's very consistent with bronchogenic tumor with an intrabronchial lesion that was completely occluding the entire right lung from the bronchus

intermedius on.

Q It's also consistent with a metastatic tumor that was occluding the bronchus; isn't that true?

A If you're going to find a tumor that will spread in the bronchiole, it could do that.

Q Don't tumors spread into the bronchus?

A Rarely.

Q In your experience?

A Rarely in the literature and rarely in my experience.

Q What literature can you cite that supports that statement?

A I don't have any ready reference. I will say that it's in my experience.

MR. YOUNG: Just so the record is clear --

MR. WAGNER: Do you want to testify or are you going to make an objection?

MR. YOUNG: I want the record to be clear about the literature.

MR. WAGNER: You know, it's not your place to testify, Jim.

MR. YOUNG: I don't mean to testify.

MR. WAGNER: Then don't. Here, let's go to the next one.

(Exhibit(s) 42 marked for identification.)

Q Doctor, I have shown you what the reporter has marked as Exhibit 42. Is that a document you have seen before today?

A Yes, sir.

Q What is it?

A It's a redictation of the bronchoscopy procedure by Dr. Turner.

Q And when did she redictate the bronchoscopy procedure in Exhibit 42?

A 7-22-91.

Q When did Mildred Wiley die?

A 6-24-91.

Q Do you know what the circumstances were that caused Dr. Turner to redo the bronchoscopy report, which is Exhibit 41, and convert it into the report that's Exhibit 42?

A I presume that when she dictated the death summary on 7-21, she was extremely frustrated that the bronchoscopy dictation that she had done was not back. So she redictated it on 7-22.

Q Doctor, if we look at Exhibit 41 in the lower left-hand corner, we see two dates, don't we, June 6, 1991 and June 7, 1991?
MR. YOUNG: I don't think he has 41.
Q Do you have 41 in front of you?
MR. YOUNG: Now he does.
Q You and I have agreed before, have we not, Doctor, that June 7th, 1991, would be the date it was typed?
A True.
Q So your statement it wasn't in existence when she dictated Exhibit 42 on July 27, 1991, is not accurate?
A Did I say it wasn't in existence?
Q I thought you did. If not, I correct myself. I thought --
A Could I have that read back?
Q They are correcting me. You said it wasn't back yet, and I'll accept that.
A You are down in this cubby hole dictating these things, and it's not back. And, you know, where is it? You tell somebody to find it.
And when you come back the next day and

it's not there, in order to not get your admitting privileges taken away from you, you redictate it, although, you know it's been done. I mean, that's standard operating procedure. It was in 1991.

Q Let me see if I've got this straight, and you correct me if I am wrong. The bronchoscopy report, Exhibit 41, was typed on June 7, 1991, correct?

A The original dictation 6-6-91.

Q Yes. And it was typed the next day, June 7, 1991. We can tell that by looking at these dates, can't we?

A Right.

Q Now, is it your statement -- and you can correct me if I'm wrong -- that from June 7, 1991, until Dr. Turner dictated Exhibit 42 on July 22, 1991, that Exhibit 41, the original bronchoscopy report, never surfaced?

A No.

MR. YOUNG: I will object.

Q Excuse me. Then what is your testimony?

MR. YOUNG: I will object to these questions about why the whole process got

started and why Dr. Turner redictated the note on July 24th. These questions call for speculation on the part of the witness to speculate as to why Dr. Turner did whatever she did. So I'm objecting on that basis.

Q Having been properly coached now, Doctor, can you answer the question?

MR. YOUNG: I object to you calling that coaching. If you ask him a question that asks him to speculate, I'm entitled to object on that basis and point out the points that call for the speculation. So I object to your characterization of that as coaching, testifying, and/or teaching.

MR. TITTLE: I respectfully disagree. I think I need to say something at this point. I think you can make these objections by objecting to form, which is appropriate. I think Dick is right in that earlier today and throughout the deposition, you have made speaking objections. I would note my objection as to your method of objecting also.

MR. YOUNG: That's fine. I'm entitled to show the basis of the objection.

In fact, I'm required to.

Q I am sure you no longer remember the question or do you?

A I should hear it again.

MR. WAGNER: Let me see if I can rephrase it. And, Counselor, I will agree that your previous objections are incorporated to my question.

MR. YOUNG: Thank you.

Q We can tell by looking at Exhibit 41 that it was dictated on June 6, 1991, and typed on June 7, 1991, correct?

A Correct.

Q We have agreed on that?

A Right.

Q We can tell by looking at Exhibit 42, which is the revised version of the bronchoscopy report, that it was dictated on July 22, 1991, and typed on July 24, 1991.

A True.

Q Now, do you know of your own personal knowledge of the whereabouts of Exhibit 41 from the time it was dictated on June 6th and transcribed on June 7, 1991, until July 22, 1991?

A No, sir.
Q Whatever you would tell us about the fact that you think that she dictated, "she" being Dr. Turner, dictated Exhibit 42 because she was frustrated because she didn't have Exhibit 41, that's just based on speculation; is that right?
A It would be a typical procedure in those days. We were not on computers.
Q But you don't know it as a fact?
A No.
Q Have you ever talked to Dr. Turner about the fact that there are two bronchoscopy reports?
A No. I'm not sure I knew it until recently.
Q When did you find it out for the first time?
A When I was reviewing all this material.
Q Did that seem odd to you?
A I was curious. But then the first thing you do when you see a redictation is to look at dates.

And having been at Ball Hospital for 25 years, having been the victim of a medical records circumstance such as this -- or this thing very well may have been on the chart

the whole time. But from the time that she died until the time it gets into your box down in medical records, it gets looked at from top to bottom, insurance, et cetera, et cetera, et cetera.

And it is certainly not unusual to sit down in that cubicle dictating the chart and get halfway through the dictation and, "Where is the dictation for the bronchoscopy?" So it is strictly speculation. I'm telling you in 1991, nothing unusual.

Q Have you ever compared Exhibit 41 and Exhibit 42? As to their contents, I mean.

A I read them both. I can't say that I --

Q You haven't actually compared them?

A I can't say that I have.

Q In the upper right-hand corner of Exhibit 42, the revised bronchoscopy report, I notice that no copy was sent to Dr. Patel; whereas, on Exhibit 41, a copy was sent to Dr. Patel. Do you see that?

A True.

Q Do you know why that is?

A No.

Q And no copy was again sent to you, correct?
A Correct.
Q And I notice on Exhibit 41 a copy was sent to Dr. Walker; but on Exhibit 42, no copy was sent to Dr. Walker. Do you know why that is?
A No, sir.
Q And I notice on Exhibit 42, a copy was sent to Dr. Sprunger; but on Exhibit 41, no copy was sent to Dr. Sprunger. Do you know why that is?
A No.
Q Do you see the second paragraph of Exhibit 42, "The patient was made NPO after midnight"?
A Yes, sir.
Q A full explanation of the risks and benefits of this procedure were given to the patient, as well as the husband"?
A Yes, sir.
Q "Risks include increasing shortness of breath, bronchospasm and death." Do you see that?
A Yes, sir.
Q That doesn't appear in Exhibit 41, does it?

A No, sir.
Q So that's some new material that Dr. Turner added to Exhibit 42, isn't it?
A It's in the dictation of July 22nd. And it wasn't in the dictation of June 6th.
Q Now, Doctor, I want you to look at the fourth paragraph of Exhibit 42. You see there it starts out, what is that, arytenoid structures?
A Arytenoid.
Q Arytenoid structures and so forth. And then in about the third or fourth sentence, "The bronchoscope was then gently inserted through the cords into the trachea. When approaching the carina, the carina did appear to be markedly widened. The left lung segments were inspected carefully. Initially, all the segments were patent." And then she says, "No evidence of endobronchial lesions were noted."

Now, that sentence appears in Exhibit 42 in the context of her examining the left bronchi, correct?
A Correct.
Q And if we look at Exhibit 41, that sentence

appears in the context of her examination of the right bronchi, correct?

MR. YOUNG: What part are you on in Exhibit 41?

A I would say that it was in relation to dictating the right upper lobe from the right main stem to the bronchus intermedius is the way I interpret that.

Q Let's look at Exhibit 41 again. About four or five lines down, the fourth paragraph that you and I are looking at, it says, "Upon entering the right upper lobe segments, marked mucosal mounding was noted. No evidence of endobronchial lesions were noted, however," right? She's on the right side? That's clear, isn't it, Doctor?

A No evidence of endobronchial lesions were noted.

Q And she is on the right side, correct?

A Right.

Q Now, Exhibit 42, the statement, "No evidence of endobronchial lesions were noted," appears in the context of her examination on the left side, isn't it?

A True.

Q Do you know why she changed that? Did you ever talk to her about why she changed that?

MR. YOUNG: That's two questions. Which one do you want him to answer?

Q The last one. Did you ever talk to her about why she changed that?

A It does not strike me as being unusual that you might use a certain terminology. And when you say all the segments were patent -- you're on 42 -- that's really the same thing as saying there were no endobronchial lesions, I guess. I mean, is that what you're saying? You're wondering why in describing the left side, she used different terminology with the second dictation as compared to the first?

Q No, I'm pointing out -- and I'm asking a question which I think is very simple. And that is in Exhibit 41, the statement, "No evidence of endobronchial lesions were noted," is written in the context of Dr. Turner's examination of the left side, correct?

MR. YOUNG: I will object. The document speaks for itself. And it

shouldn't be up to this witness to interpret it.

Q Let's look at Exhibit 41 together, Doctor. Again, the fourth paragraph, about midway down, do you see the sentence where it says, "Upon entering the right upper lobe segments," do you see that sentence?

A Yes, sir.

Q And that sentence is written after she said, "The bronchoscope was then withdrawn and reinserted in the right main stem." So she's left the left side and gone in the right side, right?

A Correct.

Q Then she says, "Upon entering the right upper lobe segments, marked mucosal mounding was noted. No evidence of endobronchial lesions were noted," she says, right?

A Right.

Q And that notation of, "No evidence of endobronchial lesions were noted," is in reference to the right side, correct?

A The right side down to the level of the bronchus intermedius.

Q But the right side, where Mildred Wiley had

her cancer, right? I mean, it's clear, isn't it, Doctor, that the sentence, "No evidence of endobronchial lesions were noted," is in reference to what happened after Dr. Turner withdrew the bronchoscope from the left side and went into the right side?

A "Upon entering the right upper lobe segments, marked mucosal mounding was noted. No evidence of endobronchial lesions were noted."

Q "...however, with insertion of the bronchoscope into the bronchus intermedius," period, right?

A Period.

Q So she is talking about the bronchus intermedius on the right side, isn't she?

A When you read there was total occlusion of the airway with tumor and mucosal edema, what does that mean other than there was endobronchial disease.

There was total occlusion of the airway with tumor and mucosal edema. You cannot say that if you have already said that all of the segments were patent and there was no

evidence of endobronchial lesions. That by definition is an endobronchial lesion.

Q All I'm asking, Doctor, is with reference to Exhibit 41, the sentence, "No evidence of endobronchial lesions were noted, however, with insertion of the bronchoscope into the bronchus intermedius," is in reference to the right bronchus, right? Correct?

A That is describing the right side.

Q And if we look at Exhibit 42, in the sixth paragraph, where she describes the bronchoscopy procedure, she begins by talking about her examination of the left lung, correct?

A True.

Q And she says, "The left lung segments were inspected carefully. Initially, all the segments were patent. No evidence of endobronchial lesions were noted."

A True.

Q So that same phrase or sentence appears in Exhibit 42 in reference to the left side instead of the right side, doesn't it?

A On the left side, that was brought out after she had described looking at all the

segments, right? "The left lung segments were inspected carefully. Initially, all the segments were patent." That implies that she looked at all. So it would have been -- that's the way I interpret it.

Q All right. But you don't see in Exhibit 42, the revised version of the bronchoscopy report, the sentence or phrase, "No evidence of endobronchial lesions were noted in reference to the right side," do you?

A No.

Q Now, Doctor, also in the "IMPRESSION" section in Exhibit 41, under paragraph 1 of the "IMPRESSION" section, Dr. Turner wrote or dictated, "Primary neoplastic process right main stem," right?

A Correct.

Q And in paragraph 1 of Exhibit 42, in paragraph 1, she wrote, "Extensive neoplastic process with total obstruction of the bronchus intermedius and submucosal mounding." She left out the word "primary," correct?

A Correct.

Q Do you know why she made all these changes

that we are noting?

A It was a month later.

MR. YOUNG: I guess we would object to your characterization of changes.

Q You haven't really discussed it with her?

A No, sir.

Q By "it," I mean these changes we are talking about. You haven't discussed those with Dr. Turner?

MR. YOUNG: I object. That assumes your statement that changes have been made is accurate. That's just your interpretation.

A I don't think it would be possible a month later to dictate the exact same terminology about a procedure that you did the month before.

Q My question was have you discussed these changes that we have been noting with Dr. Turner?

A No, sir.

Q Does Dr. Turner as a matter of routine do bronchoscopies in your experience?

A Yes, sir.

Q In your experience, is it unusual for

someone who is not a pulmonologist to do bronchoscopies?

A She is trained as a critical care physician. That would be a standard part of her training to do bronchoscopy.

Q On Exhibit 42, Doctor, on the second page, in paragraph 3, she dictated, "Probable carcinoma of the lung with metastatic lesions to both vertebrae, as well as to the chest wall." Do you see that?

A Yes, sir.

Q We don't see that in Exhibit 41, do we?

A No, sir.

Q Is it possible to determine metastatic lesions to both vertebrae from a bronchoscopy?

A No, sir.

Q In paragraph 2 of Exhibit 42, the revised version, she wrote or dictated, "Widened carina suggestive of extensive mediastinal lymph nodes." Do you see that?

A You are talking about 42?

Q Yes, sir, the revised version.

MR. YOUNG: Page 2, Doctor.

MR. WAGNER: Page 2 at the top

under paragraph 2.

A Sure, I'm sorry.

Q Do you see that?

A Yes, sir.

Q We don't see that in the original Exhibit 41 bronchoscopy report, do we?

A You see the description of that process in the carina, but you don't see this other explanation of it.

Q Well, she mentioned in Exhibit 41 that the carina appeared to be markedly broadened anteriorly. But she didn't note in Exhibit 41 that it was suggestive of extensive mediastinal lymph nodes, did she?

A No, but that's typically what does that. That's what broadens the carina, subcarina lymph nodes. On bronchoscopy, if you see a broadened carina, that's not good news.

Q And would you agree with me, Doctor, that some of these matters that we have been noting and I have been questioning you about would represent changes that appear in the revised version of Exhibit 42 and are not in Exhibit 41?

MR. YOUNG: I will object to the

characterization or mischaracterization.

A I would say the dictation from 7-22 differs word for word from the dictation of 6-6. But I don't see that if you did not have this one to refer back to, that you would end up word for word or even line for line. I guess none of these things you have brought up particularly are striking to me.

Q All I asked you, Doctor, was whether or not in your opinion they represent changes?

MR. YOUNG: That's been asked and answered. He answered your question.

Q You can answer. You know what a change is, don't you, Doctor?

A I know what a change is. But if you don't have the original, how do you describe it as a change?

Q Because something that appears in a revised version that is not in the original, that's a change, isn't it, Doctor?

A I would say the summary of the second dictation is, in my opinion, similar to the summary of the first. There are words that appear that are different. I would not use the word "change." That implies she was

looking at this and changing.

I would say that the description was different in some ways as to the first one. Change implies to me that she took a look at that and altered it. And I see no reason to believe that.

Q But you don't know whether she did that or not. You don't know whether she had Exhibit 41 in front of her when she dictated Exhibit 42, do you, Doctor?

A No.

Q I show you what I will ask the reporter to mark as Exhibit 43.

(Exhibit(s) 43 marked for identification.)

Q You have seen Exhibit 43 before, Doctor?

A Yes, sir.

Q And that's a pathological report of the brushings and washings that Dr. Turner obtained during the course of her bronchoscopy?

A This is a single report of a biopsy. It does not have anything to do with the washings and brushings.

Q All right. Let me rephrase the question.

Exhibit 43 is the pathologist's report on the biopsy obtained by Dr. Turner during the course of her bronchoscopy procedure, correct?

A Correct.

Q And what was the result of the pathologist's examination of that tissue that Dr. Turner obtained?

A "Necrosis with atypical cells," which means suspicious but not confirmed of a malignancy.

Q Did the pathologist, Dr. Baldwin, make some comment about what he was looking at?

A He is talking about whether he can make an unequivocal diagnosis of carcinoma. And he says he can't.

Q What it says here is, doesn't it, Doctor, "Due to the small amount of tissue and poor preservation, an unequivocal diagnosis of carcinoma cannot be made." Isn't that what it says?

A Yes, sir.

Q And what poor preservation occurred, do you know?

A I have no idea.

Q Is it the responsibility of the physician who performed the bronchoscopy to see that a biopsy is properly preserved?

A You do your best. There is quite a chain of command to get that done. You can't stop the procedure and take care of it yourself.

(Exhibit(s) 44 marked for identification.)

Q What is Exhibit 44, Doctor? Have you seen it before?

A Yes, sir.

Q What is it?

A It's brushings of this area.

Q That Dr. Turner obtained?

A Yes, sir.

Q And they are brushings that Dr. Turner obtained during her bronchoscopy, correct?

A Yes, sir.

Q And this is a report of the pathologist that examined those brushings?

A Correct.

Q When pathologists do this sort of thing, they look at the specimens, tissue, brushings, and washings that are submitted to them under microscope, don't they?

A Yes, sir.
Q And they are looking at them to determine whether or not in this case there is any abnormalities or malignancies present, right?
A Correct.
Q And what was the result of the examination that's reflected on Exhibit 44?
A Abnormal cells, again suspicious, not confirmatory. You wouldn't want to have one of these.
Q The pathologist wrote, "A few atypical cells," right?
A Correct.
(Exhibit(s) 45 marked for identification.)
Q Now, I'm showing what you the reporter has marked as Exhibit 45. You have seen that before, Doctor?
A Yes, sir.
Q What is it?
A It's a brushing of the same area.
Q This is the pathologist's report of the brushings obtained by Dr. Turner during her bronchoscopy?

A That is correct.
Q And what is the result of the examination of the pathologist?
A This is negative.
Q Negative for what?
A It was just negative.
Q For everything?
A Yes. This is the one you want. You want them all like this.
(Exhibit(s) 46 marked for identification.)
Q Now, Exhibit 46 is another pathologist's report of specimens obtained by Dr. Turner during her bronchoscopy?
A Right, "Bronchial trap washings."
Q What are bronchial trap washings?
A It's the same procedure that Dr. Patel reported where you put in fluid and try to get some cells to disengage. And they can be found on --
Q This was written by Dr. Baldwin?
A Yes, sir.
Q And his conclusion was, "Negative for malignancy," correct?
A Right.

Q Now, having examined the pathological reports of the brushings, washings, and biopsies obtained by Dr. Turner during her bronchoscopy, none of the pathological reports made any finding of the presence of an adenocarcinoma, correct?

A True.

Q None of the pathological reports that examined the biopsy, brushings, and washings obtained by Dr. Turner concluded that there was any cancer present, correct?

A We have another washing yet that hasn't been reviewed that discusses squamous cell carcinoma. You asked me if anything you had showed me to date confirmed it. The answer to that is that nothing you have shown me so far confirms it.

Q I will show you what I will ask the reporter to mark as Exhibit 47.

(Exhibit(s) 47 marked for identification.)

Q Is Exhibit 47 the pathology report you were referring to?

A Yes, sir.

Q And this is another examination of trap

right hilar mass, right?

A Yes, sir.

Q And what is it that the pathologist is looking at here? Is it a washing or biopsy or what?

A I believe that would be the same as the report that was listed as --

Q Exhibit 46?

A -- the washing. Except with a washing, they do two exams on it. One, they spin it down and do what is called a cell block. The other they just look at it as it comes.

And I would say Exhibit 46 was probably the cell block. Yes, trap right hilar mass for cell block is Exhibit 46. This would be the washing that was just presumably put under the microscope. So it would be --

Q For the record, the second "this" you are talking about is Exhibit 47?

A Exhibit 47 would be, as I understand it, just the fluid that was rinsed out; and they look at it under the microscope.

Exhibit 46, they concentrate it and do a cell block so it comes through on a different form. This is the cytology form.

This is a pathology form.

Q 47 is the cytology form?

A 47 is the cytology form. 46 is like a pathology form where they have a much larger collection of cells because it's in a block.

Q And the diagnosis, pathological diagnosis, contained on Exhibit 46 would be more reliable than what's depicted in Exhibit 47; isn't that true?

A My belief is that that's true.

Q In Exhibit 47, all the pathologists wrote who examined the cytology was that "A few cells are highly suggested of squamous cell carcinoma," right?

A Correct.

Q So, Doctor, it's a fact, isn't it, that up to this point in time as a result of Dr. Turner's bronchoscopy, the biopsies, and the washings and the brushings she obtained, there is no conclusive diagnosis of the presence of any cancer in Mildred Wiley's lung?

MR. YOUNG: I will object to the form of the question. It's also overly broad. It assumes facts not in evidence.

MR. WAGNER: You can answer.

A Would you repeat the question?

MR. WAGNER: Read it back.

(The requested material was read back by the reporter.)

MR. YOUNG: Same objection.

A Based upon the results of the bronchoscopy, we have not proven definitively a malignancy of the lung.

Q I will show you what I will ask the reporter to mark as Exhibit 48.

(Exhibit(s) 48 marked for identification.)

Q Exhibit 48 is a copy of another part of the progress notes relating to Mildred Wiley?

A Correct.

Q It contains your handwriting in the middle, opposite the date of June 7, 1991?

A That is correct.

Q And can you read what you wrote?

A "I spoke to husband, son, and daughter regarding limited prognosis if indeed this is a bronchogenic carcinoma." That would have been the day after the bronchoscopy.

Q Now, Doctor, you were not certain when you

wrote this note on June 7, 1991, that there was a bronchogenic carcinoma, were you?

A We didn't have these reports back. We have a description in the progress notes on 6-6 by Dr. Turner. Could I see that?

MR. YOUNG: Yes, sure.

Q Sure, you can it see if I can figure out what it is that you are referring to.

A It would have been the previous progress notes.

Q One we have marked as an exhibit?

A No, it hasn't come through yet.

Q You will have to help me with that, Doctor. I'm not sure what you are referring to.

A Does anybody have all the progress notes?

Q They are probably in that stack there in the middle of the deposition table which represent Dr. Turner's medical records, which I understand is the one you have reviewed and shared.

MR. YOUNG: What date are you looking for?

THE WITNESS: 6-6.

A Dr. Turner's note, bronchoscopy: Carina widened. Left lung, all segments patent.

Right upper lobe partially obstructed with swollen mucosa. Entire bronchus intermedius obstructed with neoplastic process. Edematous mucosa. Brush obtained. Biopsies limited, secondary to malfunction bronchoscope.

So I would have seen that the previous day. And that would have resulted in my comment here, not yet having received any of these materials that if this is a bronchogenic carcinoma, then the prognosis is not good. Keep in mind this was three days before she was made a no code, meaning that things presumably were deteriorating pretty fast.

Q That note of Dr. Turner's that you just read doesn't say anything about a bronchogenic tumor, does it?

A Well, that is the description of -- when you say that --

Q I don't mean to interrupt you. But doesn't bronchogenic mean a tumor that originates in the bronchus?

MR. YOUNG: Excuse me, but you are interrupting him. And I think he is

entitled to finish his answer.

MR. WAGNER: If I did, I apologize.

A What I was trying to explain is why I talked about a bronchogenic carcinoma. When I read a bronchoscopy report which says, "Right upper lobe partially obstructed with swollen mucosa, the entire bronchus intermedius obstructed with neoplastic process," by that time I would have had access to the initial chest X-ray, the repeat X-ray, and CAT scan of the thorax on 6-3 which reads like, in my opinion, a typical case of bronchogenic carcinoma.

And then I see a note on the chart that says from the right upper lobe down, there's complete obstruction. Then there would be no other explanation for all these findings at that point than to call it a bronchogenic carcinoma by description. The pathology reports were not back yet. But she would not have had to use that word for me to put this together as what I would say is a typical pattern finding of a bronchogenic carcinoma.

Q I thought you had indicated to me you were

relying upon Dr. Turner's note that you have read to us?

MR. YOUNG: I object. That misstates what he said, and that's argumentative.

A I don't think I could have divorced what I knew to be the case relative to X-rays, when I saw her report, and make this note simply on the basis of the previous note. I could not have put that together in any other way but, okay, I have seen those reports, these reports, and these reports. Dr. Turner tells me this. It's a bronchogenic carcinoma. And at that point, you don't know you are going to be arguing semantics.

Q The word "bronchogenic," Doctor, doesn't that mean that the tumor originated in the bronchus?

A Correct.

Q Inside the bronchial tubes?

A Correct.

(A brief recess was taken.)

Q Doctor, it's a fact, isn't it, that when you wrote this progress note on June 7, 1997, regarding the discussions with Mrs. Wiley's

family, that you had no objective evidence of a bronchogenic carcinoma in Mrs. Wiley?

MR. YOUNG: I will object to that because it misstates the evidence, and it's been asked and answered extensively.

A That is not true. There was a lot of objective evidence for this diagnosis. There was no histologic diagnosis when I wrote that note.

Q There was no histologic diagnosis. And what was the objective evidence?

MR. YOUNG: Objection. He said no histologic evidence, not histologic diagnosis, for whatever difference that makes, other than keep the record clear.

A As I said a while ago, the two chest X-rays, the scan of the chest, I would add the pattern of distribution, widespread bony skeletal disease. I would add a patient that had been coughing up blood, coughing by some accounts since the previous fall. That would be objective evidence to this diagnosis.

I did not have histologic confirmation at that point as to what the diagnosis was.

Q And the histological confirmation that you are referring to would have been something that you would have seen in the pathological report, correct?

A Right. Histology is the term for tissues. Pathology is the term for abnormal tissues. It's the same term when we would use it in that context.

Q When you had your conversation with Mrs. Wiley's family on June 7, 1991, that you reported in Exhibit 48, did you discuss with them the possibility that she might have something other than a bronchogenic carcinoma?

A I have no recollection as to that conversation.

Q All you can recall is what you wrote here and that we see in Exhibit 48; is that right?

A Yes, sir.

(Exhibit(s) 49 marked for identification.)

Q I show you what the reporter has marked as Exhibit 49. Do you recognize this as Dr. Dickerson's consultation notes?

A Correct.
Q And who is Dr. Dickerson and what is his specialty?
A He is a radiologist at Ball Memorial Hospital.
Q In the first full paragraph there in the last sentence, he says, "I have been asked to see her regarding palliative radial therapy." What is palliative radial therapy?
A It would be an effort to reduce the pain in her back, as compared to a curative attempt at some type of treatment.
(Exhibit(s) 50 marked for identification.)
Q You have seen Exhibit 50 before, Doctor?
A Yes, sir.
Q This is a report of a fine needle aspiration biopsy that was done on Mildred Wiley?
A Right, it's the radiologic description of the procedure.
Q And this is a procedure where they use a needle to obtain a tissue specimen; and it's guided by CT or CAT scan; is that right?
A Yes, sir.

Q And in the "IMPRESSION" section, we see, "Fine needle aspiration biopsy of a large mass anteriorly at the base of the right lung was performed as described above," right?

A Yes, sir.

(Exhibit(s) 51 marked for identification.)

Q I hand you Exhibit 51, which is the pathological report of the fine needle biopsy; is that right?

A That is correct.

Q Now, the pathological diagnosis refers to a, "Fine needle aspiration, lung, right upper lobe." Do you see that?

A Yes, sir.

Q But the previous exhibit we looked at indicated that the biopsy was done at the base of the right lung, correct?

A True.

Q So there is a discrepancy here, isn't there?

A Yes, sir.

Q Would you put more reliance in the radiologic report that it was taken from the base of the right lung?

A That would be provable with review of the CT scan. So that would be most likely accurate.

Q Now, in the "COMMENT" section, there's a reference here to Dr. Sandquist and Brown. And the report is written by Dr. Baldwin, correct?

A Correct.

Q And it says here -- this is about midway through the "COMMENT" section -- "All of us agree that the chest wall tumor and the tumor from the lung fine needle aspiration appear to be the same." Now, the chest wall that they are referring to was the --

A Original biopsy, 6-1, by Dr. Kurt Sprunger.

Q And it says here, "...that the chest wall tumor and the tumor from the lung fine needle aspiration to be the same. Dr. Sandquist and myself favor a diagnosis of adenocarcinoma. Dr. Brown favors a diagnosis of poorly differentiated carcinoma." So the pathologists weren't in agreement, correct?

A Correct.

Q And these are all competent pathologists --

A Yes, sir.
Q -- that you would put reliance on or that you would rely on?
A Yes, sir. That's what -- I think the pathologists would tell you that the majority of these poorly differentiated carcinomas in that area would either be adenocarcinoma or a squamous cell carcinoma, but they had an honest difference of opinion.
Q Well, it says here, "Dr. Brown favors a diagnosis of poorly differentiated carcinoma," right?
A True.
(Exhibit(s) 52 marked for identification.)
Q Exhibit 52 is another pathological report, correct?
A Correct.
Q And this is a report of examination by a pathologist of sputum taken from Mildred Wiley?
A Correct.
Q And the report is negative, right?
A Negative.

Q Is it standard practice to examine sputum in cases where you are trying to diagnose cancer?

A On occasion, you can get a diagnosis with sputum. It was done more before we had fine need aspirants that made biopsies so easy. We used to do a lot of sputum analyses.

Q In any event, what was --

A It was negative.

Q The result was that it was negative for any cancer cells, right?

A Correct.

(Exhibit(s) 53 marked for identification.)

Q Exhibit 53 is another radiological report that relates to Mildred Wiley, correct?

A That is correct.

Q And you have seen it before today?

A Yes, sir.

Q And this is essentially about the heart, isn't it?

A Well, it's a full chest X-ray. It's a portable, which means it was taken at the bedside instead of in the department, which limits somewhat. I think the other chest

X-ray we had was probably front and side. This is simply a front at the bed.

Q It says here that, "The patient" -- that would be Mildred Wiley -- "has developed a large right pleural effusion since June 13, 1991." That's fluid, isn't it?

A Correct.

Q And where is all this fluid that's being noted here?

A It's in what they call the pleural space, the lining of the lung. It would be like if you go back to where you had inner tubes and tires, it would be the space between the inner tube and the tire. And there's fluid in there which puts pressure on the lung.

Q And then the next sentence says, "The heart is enlarged and there is vascular engorgement. This is compatible with a congestive failure."

A Congestive heart failure is what they are saying.

Q And that's the impression also in paragraph 1, that, "This," being what is noted, "is compatible with congestive failure and is a change since June 31, 1991?

MR. YOUNG: June 13.

MR. WAGNER: I'm sorry. June 13, 1991.

A I didn't have a X-ray from 6-13-91 in my review.

Q I don't want to dwell on that or take time to go back and look at it. But she was suffering, she being Mildred Wiley, was suffering from congestive heart failure at this time?

A As I remember, that was how she was treated by Dr. Turner, for congestive heart failure.

Q And what was the cause of the congestive heart failure at this time?

A You could not learn that from this X-ray. And I don't recall whether the chart described what the problems were or not. Anemia will aggravate those conditions. And she was anemic when she came in. It may be that her blood count dropped further. That can precipitate congestive heart failure.

Q Is there a relationship, in your opinion, between the pleural effusion and congestive heart failure?

A Pleural effusion is presumably caused from

the backup of the heart, and that's why the engorgement of the vessels. It implies back pressure.

(Exhibit(s) 54 marked for identification.)

Q Now, Exhibit 54 is a letter actually, isn't it, that was written by Dr. Dickerson to Dr. Turner, dated June 24, 1991?

A That is correct.

Q And you have seen this before?

A Yes, that was the date of her death.

Q And isn't radiation one of the treatments that can be used to treat cancer?

A Yes, sir.

Q And Dr. Dickerson, I think we noted earlier, is a doctor who specializes in the administration of radiation to treat cancer, correct?

A Correct.

Q And he reports here that, "Mrs. Wiley's radiation therapy stopped last Friday as she appears to be failing to thrive and not responding significantly to treatment," correct?

A Correct.

Q And in the next sentence he says, "The following are the details of the radiation therapy that she received." And he describes the machine and then the sites L1 to L3 spine, the right shoulder and right femur. That would be the areas of Mildred Wiley's body to which radiation therapy was administered, correct?

A Correct.

Q So there was no radiation therapy to the lungs, correct?

A That is correct.

Q Was the radiation therapy that was directed to her spine done because of the mass that was noted in the radiological reports that we saw earlier in your examination? Isn't that true?

A It was done for pain control. And that was an area she was having pain. It was his assessment the L1 to L3 would have been pain. The right shoulder would have been pain. The right femur was the one that was at risk for breaking. It was the rather long 4 cm. by 1 cm. And that would be at risk for fracture. So I presume that was

his rationale for choosing those three sites.

Q We have noted earlier, without having to go back through here, a number of reports, radiological reports, that showed that there had been a destruction of part of the spinous process in L1 to L3, correct?

A Correct.

Q Now, the radiation wasn't directed toward L1 to L3 of Mildred Wiley's spine to restore that destruction, was it?

A To relieve pain.

Q Wasn't Dr. Dickerson's radiation of L1 to L3 in the spine because of the mass that had been noted that was adjacent to the L1-L3 area in the earlier radiological reports?

A Pain would be primarily a result, I would believe, of the damage to the bone. That's where pain comes in. Soft tissue tends in and of itself not to inflict pain.

You get bone pain when there's anything that interrupts the cortex of the bone. So I believe when he used that word "palliation," that's what he meant by saying he was going to treat that area.

Q Well, radiation wasn't going to restore the destroyed spinous process in L1 to L3, was it, correct?

A No, sir.

Q To the extent that was causing the pain, the radiation wasn't going to do any good to alleviate pain, right?

MR. YOUNG: I will object. That misstates his testimony, and it's an improper form.

A You would expect bone pain, when you're able to treat it with radiation therapy, to be highly sensitive, almost irrespective of the cause to radiation therapy.

He was only able to deliver 2700 centigray. He would have needed twice that much. So he would have needed another nine days to have brought about pain relief.

That would be my interpretation of why he included the L2 vertebra. I mean, radiation therapy is excellent for bone pain. It's just that you can't hit every area. If you tried to hit every area that she had, you couldn't tolerate it.

So he tried to choose the major areas,

the two that were hurting and the one that was perhaps an impending fracture.

Q Do you know whether or not as a matter of fact Dr. Dickerson treated Mildred Wiley's L1 to L3 spine with radiation because of the presence or possible presence of a tumor in that area?

MR. YOUNG: I object. It's asking the witness to speculate.

A There was evidence that the spinous process of L2 had been affected. That would be the logical area the pain was coming from. So he was treating an area of metastatic disease to the lumbar vertebra for pain relief.

Q I don't think you answered my question. Let me see if I can repeat it.

Do you know as a matter of fact whether or not Dr. Dickerson radiated Mildred Wiley's spine in the L1 to L3 area because he wanted to treat with radiation the possible presence of a tumor in that area?

A I don't know the answer to that question.

(Exhibit(s) 55 marked for identification.)

Q Exhibit 55 is a document you have seen before, Doctor?
A Not that I recall.
Q Excuse me, go ahead.
A It's an autopsy permit signed by the decedent's husband.
Q You don't have any doubt it's part of Mildred Wiley's medical record, do you, Doctor?
A It's stamped, so the date is the date of her death.
Q And this is an authorization for an autopsy to be performed on Mildred Wiley?
A That is correct.
Q And it's dated June 24, 1991?
A That is correct.
Q And was that the day she died?
A That is correct.
Q And it's signed by her husband, Philip Wiley?
A That is correct.
Q Why was an autopsy to be performed on Mildred Wiley?
A I do not know.
Q Do you know of any purpose to be served by

having an autopsy performed on Mildred Wiley based upon your professional treatment of her?

A Would you ask that question again?

Q Based on your professional treatment of Mildred Wiley, do you know of any purpose to be served by performing an autopsy on her?

A At the time of her death, I would say that all the answers about the cause of her condition had not been given. Sometimes the family will request it. Sometimes the physician will request it to learn. I last saw her on the 10th of June, I believe; and so I really don't know.

Q So you don't know the answer to the question?

A I don't know why an autopsy was requested. There's a certain minimum number of autopsies that a teaching institution has to do. Sometimes you do an autopsy on that basis.

As I say, sometimes the physician will request it because not all the answers have been given to his or her satisfaction. Sometimes a family simply wants to know if

there's anything that might relate to heredity or other concerns. So I do not have any idea why it was ordered.

Q Have you ever heard from any source that somebody wanted to have the autopsy performed to find the primary cancer in Mrs. Wiley?

A I have not heard that. I could see an argument for wanting to do it for that reason or establish what kind of cancer it was.

Q What argument can you see?

A We had three different biopsies, ranging from poorly differentiated carcinoma to the possibility of a squamous cell carcinoma to adenocarcinoma. That could have been the rationale. I have no firsthand knowledge there was any discussion about using information at a later date.

Q Just to be certain, you don't have any recollection of your being involved in any discussions about whether or not she should be autopsied; is that correct?

A No, sir.

Q Now, Exhibit 55 --

MR. TITTLE: Excuse me. That was unclear. You mean "no," you have no recollection, right?

A I do not recall any discussion as to whether I would have recommended that or on what basis it was requested.

Q Is it accurate to say you have no recollection of being involved or hearing anybody else discuss whether or not she should be autopsied?

A That is a true statement. I have no recollection about any discussions in that regard.

Q Now, Exhibit 55 is an unrestricted authorization to perform an autopsy, isn't it? I mean, there aren't any restrictions?

A There are no restrictions listed. No one wrote "none," but there are none listed.

Q Now, in fact the autopsy that was performed on Mildred Wiley was restricted, wasn't it?

A I do not recall that the brain was examined.

Q The spine wasn't examined. The breasts weren't examined.

MR. YOUNG: Excuse me. I think in fairness to the witness, he ought to find

the autopsy report and let him look at it.

MR. WAGNER: Sure.

A There was discussion that the spine was going to be examined. But I do not see any -- is there a copy of the --

Q Let me make it easy for you, Doctor.

A There were two reports.

Q Yes, there were. And I will have them marked as exhibits. Mark these as Exhibits 56 and 57.

(Exhibit(s) 56 & 57 marked for identification.)

Q Now, Doctor, those are the copies of the autopsy reports that you were referring to that you wanted to look at, Exhibits 56 and 57?

A Yes, sir.

Q And you recognize those as copies of the autopsy reports, Exhibits 56 and 57?

A Yes, sir.

Q And so do you need to take a look at those for a minute to refresh your recollection as to whether or not, in fact, the autopsy was restricted? I believe that's what you indicated to me. And if so, please do so.

A I do not see an examination of the brain. However --

Q Doctor, again I don't want to interrupt you. If you look at Exhibit 56, see the first page where it is marked "GROSS PROTOCOL"?

A Yes.

Q And the second full sentence, "The autopsy permit is signed by her husband, Mr. Wiley, and is restricted to the chest and body," do you see that?

A Yes.

Q That tells us that the autopsy was in fact restricted; isn't that right?

A He says that there's an autopsy permit signed by her husband which is restricted to the chest and body. That would exclude it would seem the brain. And it would exclude it would seem the spinal column.

And it's listed in the final pathologic diagnoses as having no pathologic diagnosis. The Central Nervous System is listed not examined due to restriction by autopsy permit. So I have no explanation.

Q You have no explanation for how the autopsy got restricted; is that what you are saying?

A Right, based on this permit.

Q That was the question I was going to ask you, if you knew how it was it got restricted and in light of the fact we have an unrestricted authorization.

MR. YOUNG: Can we go off the record for a second?

MR. WAGNER: Sure.

(Discussion off the record).

Q Doctor, a partial answer, even though I understand you weren't involved in any of the conversations about the autopsy or the restrictions, correct?

A That's correct.

Q If we look at the third page of Exhibit 56, in the section entitled Central Nervous System, it says, "Due to autopsy restriction obtained after telephone conversation with the deceased's husband, the brain was not examined," right?

A That is correct.

Q But we also know, and you know from reviewing Exhibit 56, that there were other areas of the body that were not examined, right?

A I'm not sure what they are.
Q Well, the spine wasn't examined, was it?
A I would say that on page 5, the designation "spinal column" is the spine.
Q And it says "No pathologic diagnosis"?
A Right.
Q So he didn't make one?
A No. It says that they found no abnormalities, just like they said that about the gastrointestinal tract; uterus, tubes, and ovaries; adrenals, et cetera, et cetera. That would be my interpretation.

"No pathologic diagnosis" would be that they examined it and found nothing worth reporting would be my interpretation. I have no firsthand experience with these at all.

Q What's being reported, Doctor, just so the record is clear here on Exhibit 56, on the first two pages, what is being reported is what I understand to be the gross protocol, which is the physical or gross examination of the doctor who is performing the autopsy where he looks at visually and feels certain sections of the body, right?

A That's correct.

Q And then, Doctor, isn't it true that beginning on the third page of this exhibit, toward the bottom, we have what is the microscopic autopsy?

A That is correct.

Q Where tissue is examined under a microscope, correct?

A That is correct. The first physician does a gross exam and basically determines what is to be looked at microscopically. You do not go through every slide on every organ of the body.

He would determine what appeared to be suspicious or abnormal. And then as I understand it, that would be the area that would be submitted for this microscopic, this tremendous undertaking. And they don't look at every -- they don't go through the entire liver. They go by the gross to point them in a particular direction.

Q Follow along with me, if you will. Beginning on this page where we see the word "microscopic," we have a section entitled "Cardiovascular", right?

A Correct.
Q Where he is looking at certain specimens that are in the cardiovascular area, right?
A That is correct.
Q The next section is "Respiratory." He is looking at certain tissue from the respiratory sections under the microscope?
A That is correct.
Q And then on the next page, it continues on in the same fashion with the liver and the spleen and the pancreas and the kidneys and the gastrointestinal; the uterus, tubes, ovaries; and adrenals, correct?
A That's correct.
Q And there is no mention of any examination of the spinal area, is there?
A That's true.
Q And then the next section is entitled "FINAL PATHOLOGIC DIAGNOSIS," correct?
A That is correct.
Q And then here he is setting out various things that he thinks he saw. And as to several of these, such as the adrenals, the uterus, the gastrointestinal tract, central nervous system, and spinal column, he says,

"No pathological diagnosis was made."

Doesn't that indicate to you, Doctor, that he didn't make a diagnosis of those areas?

MR. YOUNG: I would object to that. The interpretation of the document is not accurate. It misstates the document, Exhibit No. 56.

A I don't know the answer to that. But I would interpret it that it was examined; and they didn't want to go through a long description of a normal uterus, tubes, and ovaries for no purpose, et cetera, et cetera.

And they just picked out, like under "KIDNEYS," they just said "Metastatic adenocarcinoma, left kidney." They didn't go into the right kidney. That's my interpretation. But I understand you are going to be deposing the pathologist. And they would certainly give you that information.

Q Again on the fourth page here, we see a reference to the "Adrenals," do we not?

A The adrenals, yes.

Q And it says, "Sections of adrenal are unremarkable," correct?
A That's correct.
Q So the doctor who performed the autopsy did examine sections, tissue sections, of the adrenals, right?
A That's correct.
Q Do you see anyplace in this autopsy report, Exhibit 56, Doctor, any reference to the examination of tissue that was taken from an area adjacent to the L2-L3 spinal process?
MR. YOUNG: I will object because that's been asked and answered about the spinal column.
A I have no frame of reference to answer other than the spinal column, no pathologic diagnosis. I do not know if that included that area. There is no way I could tell.
Q You have answered, but my question was: Do you see anyplace in Exhibit 56 anything that indicates to you that tissue was taken from the area adjacent to the L2-L3 spinal process and examined pathologically in this autopsy report?
A There is no report of that area by

diagnosis?

MR. YOUNG: Can we go off the record?

MR. WAGNER: I know what you're going to say.

(A discussion was held off the record.)

(The deposition testimony of Dr. Joseph Songer was adjourned at 4:45 p.m. to be resumed at a later date.)

JOSEPH M. SONGER, M.D.

STATE OF INDIANA)
)
COUNTY OF MARION)

I, Thomas A. Richardson, a Notary Public in and for said county and state, do hereby certify that the deponent herein was by me first duly sworn to tell the truth, the whole truth, and nothing but the truth in the aforementioned matter;

That the foregoing deposition was taken on behalf of the defendants; that said deposition was taken at the time and place heretofore mentioned between the hours of 8:00 a.m. and 6:00 p.m.;

That said deposition was taken down in stenograph notes and afterwards reduced to typewriting under my direction; and that the typewritten transcript is a true record of the testimony given by said deponent;

And thereafter presented to said witness for signature; that this certificate does not purport to acknowledge or verify the signature hereto of the deponent.

I do further certify that I am a disinterested person in this cause of action; that I am not a relative of the attorneys for any of the parties.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this_____day of_____, 1997.

_____
THOMAS A. RICHARDSON, Notary Public

My commission expires:
May 8, 2001

Job No. 6514